IN THE DISTRICT COURT WITHIN AND FOR

THE COUNTY OF PITKIN AND STATE OF COLORADO

Criminal Action No. C-1616

THE PEOPLE OF OF COLORADO, THE STATE

Plaintiff,

vs.

PEOPLE'S BRIEF REGARDING IDENTIFICATION ISSUE

THEODORE R. BUNDY,

Defendant.

Frank G. E. Tucker, District Attorney 506 E. Main Aspen, Colorado

Milton K. Blakey, D District Attorney 20 E. Vermijo Ave. Colorado Springs, C Co 80903 Deputy

George Vahsholtz, District Attorney Deputy

H Identification of defendant ЪУ Carol DaRonch

and

noted that W.i. Ľs the indictment indictment 9 0 sugges ecided S asis an post th ore 1'8 S irreparable riggered identification after show, 263, e 1 thus, notice to \mathbf{C} for in the U.S. test . tive indictment lineup at the U.S. 87 The 9 Ъу identification, lineups the lineups 67(1967). the 1's ខ្ល lineup or photo same and S.Ct. clear issues also ١. defendant to defendant defense misidentification," supreme any day Wade, give and photo displays have are 1951(1967), must and applicable in o f s S lineups Independent rise 388 counsel. "critical" convincing compelled testimony Court. Gilbert. Бе r S must have r S Wade, U.S. t o display suppressed indicted, conducted conducted ω In the court 218, very supra. This cases Gilbert basis factors evidence, stages Both cases counsel. is Simmons 87 his substantial same unless the without 0.8 thereafter where S.Ct. said The o f ۷. right impremissibly been requirement ۷. an В independent hold California, If, the unequivocally 1926(1967), counsel prosecution U right independen litigated t o to consider S state in pre must likelihood that 1. counsel fact 390 post bе Ļ's U.S 1 are:

- prior opportunity for victim t o observ
- defendant;
 (2) discrepency between dei
 description and the descrip
 at the time of the crime;
 (3) misidentification of an the description defendant's given actual police
- 0 the another 8 8 perpetrator
- crime; n through p defendant photo lineup
- (4) (5) prior identification failure to identify no prior
- occasion; (6) lapse or photo of (7) method O f time between crime and t lineup; and lineup
- hoto display; method used at

The B made requiring case before an indictment physical had counsel. In not the lineup reached Bundy Futhermore, 0 £ case, ρ 20 October critical stage all identifications information defendant 2, 1975 was o f SBW The filed prosecutio given lineup Wer counsel Was

procedures required by Utah statute. conducted This lineup occurred before any indictment or information filed against Mr. Bundy. criteria set forth in the on Right to Counsel grounds (Statute), "B"(sworn testimony) and "C"(Order of Court). **1**'s 388 U.S. no pursuant reason to suppress the lineup identification 293, to a court order 87 S.Ct. 1967(1967) decisions. The procedure Gilbert, Wade and under the appropriate See attached used conformed to and Stovall exhibits ۷. Thus

conducted by the Government for the purpose of allowing (1968) specifically | < whether attempt an identification of the offender". Pew, photo does 543 P.2d 86(1975). the photo display is not lineups. There is grant the right no legitimate issue of U.S. v. Ash, held (at p.2579) that ... shown pre-or-post to counsel at photographic displays 413 U.S. 300, Right to Counsel at "the 93 S.Ct. 2568 indictment. This is true Sixth Amenda witness

and basis of rejected in the self incrimination. No grounds exist to Wade case, supra. This theory was presented suppress the lineups on the

is presented to the court as Exhibit "D". analysis of the U.S. Supreme Court decisions and the contolling Utah case presented in Utah and a portion of the prosecution's Process The remaining grounds Clause of the 5th Amendment. law. for suppression rely The brief contains That issue has on

Braithwaite, U.S. significant. the recent U.S. Supreme Court 88 identification addition to the cases S.Ct. U.S. There 967(1968) wherein the . contained in Simmons V. 97 S.Ct. court reiterated the standards contained in Exhibit case of 2243 the court (June 16, Manson V. U.S., 390 1977),

power in the exercise of power or, still less, as a stitutional requirement. that each case must be facts, and the cros may apprehending offenders enforcement, "Despite innocent ĺn danger graphic identification missibly suggestive as substantial likelihood identification." prewitness allowing e em through nger that u convictions n by photograph, this procedure has d widely and effectively in criminal giry the method are unwilling to set bе trial aside identification identification at trial following a lidentification by photograph will side on that ground only if the pho suspects the ignominy ing eyewitnesses to exough scrutiny of photo the hazards from the quirement. Instead, must be considered t convictions based standpoint cs and of spa Of lessened by a course trial which exposes ground only if the pho n procedure was so imp s to give rise to a ve d of irreparable mistechnique may resun misidentification initial photographs. matter exonerate sparing supervisory O f identificafor employment arrest of con on on eye-We error the result its own o f been law photo-impert o very o f

set mining the "totality forth identification The in Turning court Neil 0 f the circumstances" also | 4 then Biggers, reliability, t o adopted the appropriate 409 U.S. the the criteria test 188, Manson set test o f 93 H court orth for "circumstances" S.Ct. in deteradopted 375 Stovall

(1972).

The

exact

language

Manson

contains

1·s:

pre- and pofactors to Biggers, 40 at 382. The witness "We time bility cor time attention, tion of the demonstrated Against ainst these fact rrupting effect tion itself". the witness to vie e of the crime, therefore ne linchpin in determining the ad-y of identification testimony fo and post-<u>Stovall</u> confrontations. ors to be considered are set out between These 409 the accuracy of u.c. e criminal, the level of oed at the confrontation, of the accuracy of u.c. of oed at the confrontation, or the weight the U.S., conclude View include Eactors ect of t out in out in out, 93 S.Ct., 93 S.Ct., the opportunity of the criminal at the curacy of hill, the witness' documents of himself. is to be weighed the suggestive id that his prior descrip level of certainty ntation, and the reliability the admissi-nony for both confrontation. identifio f o f The the

test 0 evolved identification. adopted the set Gilbert from the forth Manson "per the and in "per The se" actually Stovall. Wade case rule se" decisions) was resolved and excluded exclusion rule The Ф one second а and photograph conflict the the circuit one photo, an "totality" which outgrowth pre-trial had had

1's even if one "totality of circumstances." admissible under the "totality of Supreme Court reversed and held that the identification principles identification as impermissibly suggestive. photograph espoused in is suggestive. the Manson Both Utah and Colorado follow circumstances" decision. The constitutional test

be totally Simmons "It was not essential People v. as controlling law on photo displays free Keelin, from doubt as a prerequisite to Colo. App., 565 P.2d 957, (1977), that Mrs. Wilder's identificaadmissi-

though the scar, the the totality of circumstances. People in court identification procedures must be | < didn't stand out from the other bе identification was Sanchez, eople defendant was impermissibly suggestive but nevertheless identification on the independant basis that v. Jones, 553 P.2d 770(1976), held 520 claims of impermissibly suggestive pre-P.2d 751(1974), where a photo the only one not In this impermissibly suggestive. in case evaluated in light photos the the defendant's lineup used. theory. lineup was allowed See also ф

stances-reliability did positively suggestiveness rule one-on-one show-up. People v. could not at first, identify the defendant rule Williams, 516 P.2d 114; in favor in i Before leaving the police station a one-on-one identify O H the totality show-up 8 the defendant at rejected the culprit. was case. of circuma case the "per

Right the court elf-incrimination argument was rejected, by case basis to Counsel at photo display three-man held that lineup cases should People v. photo lineup was upheld, a 5th Amendment by the Knapp, trial 505 P.2d court. theory was rejected, 7(1973), ре ρ decided 6th Amendment on a

ertainties and ۲. inconsistencies People, 470 P.2d 837(1970), concerning identification held that

"We this fying those have held court witnesses" O Fi weight ф jury t o o f on many superimpose when evidence, determining occasions not admissibility. its judgments that the H: veracity ı, 07 not conclusions o f The the the court duty identifor o f said

even the Novemb violations photo sible though er ω • lineup eople 0 Fi under 1977, ω due show-up nor the held that process Trujillo, the totality occurred shortly oneρ Both on-one 0 H Colo. three circumstances identifications App. photo lineup show-up thereafter No.76-542, were "per was were decided Neither admissible se"

h T November following 10, People 1977, manner: | < addressed Cost on, Colo. the issue App. о Н No.76-921, ω "car lineup, decided

testimony as to the description and subsequent-of-court identification may be introduced United States v. McKenzie, 414 F.2d 80; (3rd Cir. 1969), cert. denied sub nom., United States v. Anthony, 396 U.S. 1019, 90; S.Ct. 586, 24 L.ed.2d 510. Further, factors surrounding the identification, such as the suggestiveness of the "lineup", affect only the weight to be given to the evidence, not contrary to the defendant's contention, the presence of counsel is required only in contention. accused with investig against him. See Uni 413 U.S. 300, 93 S.Ct 619 (1973); People V. 519 P.2d 344 (1974). identification court err evidence the auto car perpetrator of a cric crime itself, <u>People</u> 534 P.2d 795(1975), witness observes an automobile for presence of instances of item of in seen defendant defendant first contends that the erred when it refused to suppress nce the identification of his car uto "lineup" as being similar to t some with this leaving ith this contention.

real evidence is admissible
way connected with either tl
r of a crime, the victim, or pre-trial confronta investigators or wi See United States), 93 S.Ct. 2568, 37 testimony and the |4 description and subsequent fication may be introduced, McKenzie, 414 F.2d 808 and. and where, as is subsequently aw enforcement being scene Thus, required only in confrontation of tors or witnesses Penno, where, SBW similar to the of the crime. victim, no, 188 (184 Colo.
admission
s proper." V. Ash, L.ed.2d $\frac{100}{5}$, $\frac{1019}{5}$, 90 here, a describes officers, Colo. introduced, F.2d 808 the 182 of the at r H only rial not certain 307, ŗ. the And,

Carol adequate viewed photographs DaRonch hundreds number Armed kidnapping case, with used o f on each photos the were occasion; facts not and suggestive, only i t presented to becomes and Mr. there Bundy's there apparent this was was was no court sele evidenc that 0 n 0 she te the

"give some Bundy's misidentification". Court, Utah or police pressure exerted on Miss DaRonch to suggestiveness it rise photo. about the photo displays under the U.S. 0 a very substantial likelihood of Colorado law. Thus, there is nothing "impermissibly sugdefinitely was not Even Ļ. the o f court should find select Mr. irreparable degree Supreme

legitimate purpose. conducted pursuant to statute, with counsel, and for Furthermore, the subsequent physical lineup was

positively stantial chance assailant trial The grounds identify her attacker. court and would determine Mr. Bundy would be exonerated as not for the lineup were approved Also, r. Miss DaRonch could there was a subby the being

suggestive, pendent and there of circumstances. basis" lineup ı. S Casting it must view no real for and all that making photo displays were impermissibly doubt The court has the identification under her aside, that identification. Miss r H the court should heard the circumstances DaRonch had an "indethe find total-

II. Identification of defendant by Mrs. Harter

Wildwood which ф court seven man contained eight enunciated Inn on January 12, has The Harter identification of Mr. heard testimony that photo lineup previously men. 1975, and again out of a single photo in the DaRonch part of this brief is subject to Mr. Bundy was picked out Bundy being at the very

prior o f identification to this, pointed At the the state must present law which allows her to Mr. Bundy and said "that's preliminary hearing, be admitted as substantive evidence Mrs. Harter never 369 him." P.2d

was. (1962),The witness responded "Well, ing the identification out was recognize asked t o ۷. sustained the objection and the Supreme Court said keepthe its People, him." Starting with İf weight rather than its court he could 427 At held that P.2d 318. identify the person holding that People v. point "uncertainty Н defense counsel objected, am error. In this case, the witness Spinuzzi, not admissibility". sure, οf identification but I think I See also

iness of an extrajudicial identification, and holds 864(1965), a very under consideration." person who heard or observed thereof admissible." particularly and "As r S Colorado. the reason for trial." extended Trujillo v. an exception to а Three years later growing body of law which recognizes the worthsanctioned The important t o Therein, the admission of the testimony People, next See also See also DiCarlo V. the rule: the hearsay two paragraphs in in Gallegos v. case the court said at p.868: 146 the extrajudicial identification cases where the identifier Dawkins v. Chavez, was decided by the Supreme P.2d "That identification rule, 896. o f People U.S. its "And the opinion en-2nd application admissibility 403 285 of a testimony Cir.,6F.2d P.2d third

from circumstantial circumstances the use of recognition of the persons charged; testimony the rule... Uncertainty of identification under here and rather does present than its not have involves the weight admissibility ... the conclusiveness does not t 0 ъе militate resulting given

possibly Whatever discrepencies fication etween authority). this regard." claimed that the o f Cokley conceivably advantageous testimony and extrajudicial a police officer court cast o f Suffice ۷. the doubt states "error is also assigned People, the testimony of defendant at a so-called police lineup. ۲· (cites on to say that 449 or differences were shown the relating Gallegos P.2d 824, verity to the two the we perceive of one or t o ١. identification (1969), where at p. police officer was the People, extrajudicial identi-Gallegos." the other, t o supra no prejudicial certin testito could See

identifications of fications that this held: Cokley and an exception to the hearsay heard exception has "This Ļ T 0 5 Gallegos, jurisdiction permits ρ Kurtz observed by a third person." defendant as substantive evidence been | < supra as People, 494 extended to extrajudicial identirule. authority. P.2d extrajudicial Further, 97(1972), The court we

Trujillo, 539 P.2d 1234, (1975). photos and he identified both in the photo inability not "Evidence evidence. identify positively only photographic identification was introduced into One of 10 t o of an extra-judicial identification The defense at a subsequent stabbed. corraborate identify display. identify the best Colorado cases dealing The next day he was the At a hearing, Dunhill the defendant. protested and the court an defendant at confrontation identification made of his There assailants as being a witness named Because of Dunhill's the hearing, ۲**٠** shown seven was People 1's said at the with unable admissible, ۷. the trial.

made put identification 1 judicial circumstances of estimonial ancie ឧន in independent the identification ec ognition identification courtroom has the evidence greater in trial after the **1**'S may ր**.** admitted regardless witness' probative o f the impeached, identity... Evidence have suggestions mind. intervened value because then o f o H t o others an the whether create identification o f earlier an and extra-

tirety 5) Another The pertinent case in point part 0 ĺs H the People case 4 18 Pew, set out 54 ω in . 2d its

0

Lion of him and because the procedures employed in conducting the earlier photographic identificacation were unreasonably suggestive. He further complains that he was denied fundamental fairnes since his lawyer was not present during the photographic identification proceedings.

Nichol's testimal next cont en ends that the trial court strike Nichol's testimony gestive. He further fundamental fairness sent during the photocourt employed identifierr

a photosattempted to cattempted to cattestified that a detacte store eleven days afther six photographs in simmediately identified a ant as depicting the performe, however, divergence. Nicho ident ification procedure in which ification procedure in which is the man who stograph of the defendant as the man who should not cash the forged payroll check. Interpretation, came ified that a detective, lantorno, came ified that a days after the event, and that ed a photograph of the perpetrator of the did the prosecutor prosecutor ask om identification earlier identified that offense. who t o defend showed sh She had

Le claim that Nichol's testimony available for cross-examination at trial, the testimony as to a prior identification is admissible as independent evidence of identity, and not only to corraborate a courtroom identification. This is true even where there is no incourt identification by such witness People v. Gould, 54 Cal. 24

A further factor here is that at an in chearing prior to trial, testimony was print that substantiated the trustworthiness of earlier identification by Nichols and furtheat the trial court's conclusion that photographic identification was free from issible suggestion. See Simmons v. Unistates, 390 U.S.377, 88 S.Ct.967, 19L.ed States, 1247. free from in v. United 191.ed.2d that presentes of the full camer the imper sup ρ ed

There is no merit in the claim that counsel needed to be present during the identification proceedings. In Colorado, no right to counsel at photographic identification proceedings attaches during the investigatory stage of a criminal case."

397, 494 P.2d 587; People v. Renfro, 181 Colo. 159, 508 P.2d 396.

sible, Bundy thus at evident trial affecting r's her that Mrs. time admissible as a From the cases heretofore presented, identification and the strength of her Harter's answers matter of may pre-trial willре the attacked law. identification. affect identification of Mr. Even her by cross-examination credibility, though admisit becomes

Respectfully submitted,

FRANK G.E. TUCKER District Attorney

George Vahsholtz, #7119
Deputy District Attorney
Fourth Judicial District

Milton Deputy Ninth J n K. Blakey, 2691 y District Attorney Judicial District

THE SUPREME COURT

STATE OH COLORADO

CASE NO. 27963

THE PEOPLE OF THE SUBY AND THROUGH THEIR REPRESENTATIVES, FROM DISTRICT ATTORNEY, THEIR DULY APPOINTED)
THEIR DULY APPOINTED)

Petitioners

THE DISTRICT COURT OF THE STATE COLORADO, GEORGE E. LOHR, AS ONF OF THE DISTRICT COURT JUDGES OF DISTRICT COURT, ONE THE) OF

Respondents

MOTION FOR EXTENSION OH TIME

respectfully moves this Court file period and through Milton K. b reply of sixty COMES to Respondent's NOW, (60) days to July 17, the Petitioner, Blakey, Answer, ţο grant an extension of Deputy District Attorney, in received on April the above 1978, within which captioned cause 27, time and 1978 to for

SI GROUNDS THEREFORE, the Petitioner states as follows:

- constitutionality period. consideration 1 and briefing That of the Death Penalty the complexity than can 0 f bе the issues done requires in the more relating usual extensive to time
- can Colorado not Theodore proceed Governor's 2 0f Robert That to Colorado. the trial request Bundy, case until the (Pitkin giving and he County Court Action No. rise state of has been to this returned to custody Florida action, honors People the C-1616),
- granting requested by of this extension, Neither the party Petitioner. will roj no suffer extensions any prejudice have previously Уd the

the

State

Respectfully submitted,

FRANK G.E. DISTRICT A TUCKER

ATTORNEY

ВУ

MILTON K. BLAKEY, Chief District Attorney For the Fourth Judicial BLAKEY, Chief District

Deputy

#2691

Deputy District Attorney Ninth Judicial District

IN THE SUPREME COURT

STATE OF COLORADO

CASE NO. 27963

THE PEOPLE OF THE STATE OF COLORADO)
BY AND THROUGH THEIR DULY APPOINTED)
REPRESENTATIVES, FRANK G.E.TUCKER,)
DISTRICT ATTORNEY,

Petitioners.

vs.

THE DISTRICT COURT OF THE STATE OF COLORADO, GEORGE E. LOHR, AS ONE OF THE DISTRICT COURT JUDGES OF THE DISTRICT COURT,

Respondents.

CERTIFICATE OF MAILING FOR MOTION FOR EXTENSION OF TIME

CERTIFICATE OF MAILING

Clerk of the District Court Pitkin County Courthouse Aspen, CO 81611

Mr. Kevin O'Reilly Box 1635 Glenwood Springs, Co 81601

CIERK OF THE SUPREME COURT State of Colorado Attn: Becky Denver, Colorado

Hon. George E. Lohr, District Court Judge Pitkin County Courthouse Aspen, CO 81611

Mr. Ken Dresner Jardon Building, Suite C Gunnison, CO 81230

the foregoing to opposing Counsel of Report this 16 day of 19.78.

Draing & Herrot

THE IN THE DISTRICT COURT WITHIN AND FOR COUNTY OF Criminal Action No. C-1616 PITKIN AND STATE OF COLORADO

OF (E PEOPLE OF COLORADO, OH THE STATE

Plaintiff,

, SA.

THEODORE ROBERT BUNDY,

Defendant.

MOTION FOR EXTENTION OF TIME

Milton K. Blakey, Deputy District Court cause therefore states that the Defendant identification issues and search and seizure issues and as with the believed that they will Defendant District Attorney 1977 Attorney an opportunity to appropriately for court his briefs an COMES NOW, the has extension of not filed any briefs thusfar and it is not to file be District on December time to file briefs concerning theirs on December 9, 1977. filed in time to give Attorney, and moves this Attorney, 2, 1977, respond by December 9, was by and through to have filed and the the District The

after the District Attorney leave filing by the Defendant. to grant WHEREFORE, an extension of time the District Attorney requests to file his briefs five(5) to file briefs, the granting days

Respectfully submitted,

FRANK G.E. TUCKER District Attorney TUCKER

K. Blakey District At Attorney

ВУ Milton Deputy

IN THE DISTRICT COURT WITHIN AND FOR THE COUNTY OF PITKIN AND STATE OF COLORADO Criminal Action No. C-1616

THE PEOPLE OF THE STATE

OF COLORADO,

Plaintiff,

Vs.

THEODORE ROBERT BUNDY,

)

ORDER

Defendant.

Motion for Extension of Time and it appearing a proper warranted request, The Court having reviewed the District Attorney's

no later his briefs which were previously due on December than 5 days after II Done in chambers this SI THEREFORE ordered that the District Attorney filing by the Defendant. day of December, 9, 1977,

BY THE COURT

George E. Lohr District Judge

IN THE DISTRICT COURT WITHIN AND FOR THE COUNTY OF PITKIN AND STATE OF COLORADO

Criminal Action No. C-1616

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

VS.

THEODORE ROBERT BUNDY,

Defendant.

MOTION FOR EXTENSION OF TIME TO FILE BRIEFS

follows: time in which to file briefs and as cause therefore, states Attorney, COMES NOW, People through Milton K. Blakey, Deputy moves this honorable Court for an extension

- Mildermuth,) was located in either the Attorney General's Public Extention of Time Attorney required of Colorado. Office or any District Attorney Milton K. Blakey has had previous Attorney Lance Blakey, were assigned to prepare the brief. the State of Maine for Defender's brief, (in the case of by the Lance Sears and Chief Deputy District Attorney Milton the brief is not completed at this time. As mentioned in the People's first Motion for Original research and of the District Attorney's Offices Sears District Attorney's Office. 40 file briefs, no responsive brief has been in trial on several matters and, the past two weeks. preparation was, therefore, the People vs. Deputy District Deputy District Chief Deputy in the State commitments to the
- opposition to the Defendant's Motion The People have timely filed a memorandum brief People believes that adequate for Bill of Particulars.
- presentation prejudicial to the and that such extention as requested here will not ω of this Counsel Defendant issue of the law requests such additional for the

of time to file a brief in opposition to Defendant's Motion to Strike Death Penalty. tended for one week, from July 29, 1977 to August 5, Wherefore, the People move this Court for an extension It is requested that the time be ex-1977.

Motion ex parte and to grant the Defendant such extensions as would be reasonably required by this delay. The People further move the Court to grant this

Respectfully submitted,

FRANK G.E. TUCKER District Attorney

K. Blakey (3691)
District Attorney

THE DISTRICT COURT WITHIN AND FOR

THE COUNTY OF PITKIN AND STATE $^{
m H}$ COLORADO

Criminal Action No. C-1616

OF O E PEOPLE OI COLORADO, HO H THE STATE

Plaintiff

THEODORE ROBERT BUNDY

Defendant.

MEMORANDUM CONCERNING ADMISSIBILITY OF SIMILAR TRANSACTIONS (FACTUAL SUMMARY)

Milton People's following х. Memorandum summary Blakey, COMES NOW, the o f Deputy District 0 f facts Law Concerning Admissibility District to b,e considered Attorney, Attorney, ЪУ along with and submits and through 0 Similar the

TIME PERIOD

Transactions

previously filed.

no October 18, October Evidence 1974, 27, shows that 1974. and that her Melissa body Smith SBW found disappeared in Summit

Park Carol DaRonch was a abducted Kon November 8 ,1974, and

no

escaped from her abductor.

Caryn Campbell disappeared on anuary 12, 1975, and

body was found on February 17, V 1975.

her time o f death The was within medical testimony establishes В few hours o f the that time she Caryn concerning was Campbell's last the

seen time inconsistent on o f death January 18, 1974. with of Melissa 12, death 1975. shortly Smith The medical 18 after not her 80 testimony precise disappearance but 1's no

October

1

VICTIMS APPEARANCE

was

twenty-

hair three parted (23)The evidence shows years of age, in the middle. 5 1 5 11 that Caryn Campbell tall, 110 pounds, with long brown

parted weighed in the middle. approximately Melissa Smith 100 was seventeen (17) pounds. She had long light-brown years old, 513" tall, hair

old, middle. Carol DaRonch, approximately 5 ' 7 " on November tall, with long brown hair 8 1974, was eighteen parted (18)

TIME, LOCATION AND NATURE OF DISAPPEARANCE

Caryn Campbell's disappearance, nearly that quite that January Wildwood Inn is a resort hotel and was, on the weekend she she her room to pick up a magazine. busy. was did Caryn Campbell disappeared 12, The not violently abducted between the lobby and her room 1975 evidence indicates get. from there the Wildwood Inn at Snowmass At Aspen and there is no evidence that she ı, L fully occupied The evidence indicates the early left evening hours the to indicate 10:30 lobby o f

70 any State no other October 18, Street and 6100 indication that Melissa Smith was place along Utah. 1974 The she was violently in J.B.'s Restaurant evidence regarding her disappearance South, her route across from J.B.'s from the Fashion Place abducted from J.B.'s a t t₀ the her corner home.

last

seen around 10:00 to

area where Fashion Place Was been lured into that public. then physically South an abduction would surely have been observed November approximately a half block from Had Mal1 Carol 8, 1974, in abducted, once she was Murray, DaRonch not vehicle Carol DaRonch was lured Utah, to a vehicle parked and driven from the escaped from her abductor J.B.'s removed Restaurant. from from mal1 by members

have Wildwood manner been and Melissa Smith from J.B.'s. ខ្ល of her disappearance from mysterious as that of Caryn Campbell the Fashion Place Mall would from

[V. BODY LOCATION

dumpêd the Sinclair Divide. there in the snow and brush in this February 17, The evidence shows that the body 1975, off the Owl Creek Road just The scene indicates that o f rather remote area. Caryn Campbell the body over 27,

in Murray, Utah. location. Summit the County The body of tall oak brush east of approximately 22.7 miles from J.B.'s This is also a rather remote Melissa Smith was found on October Summit Park, subdivision and untraveled Restaurant

V. BODY DESCRIPTION

had been wearing at the time of her disappearance. absolutely no other clothing body was entirely nude except for the gold earrings which the time that the body of Caryn Campbell was found, or jewelry on the body. There was

except for When her Melissa necklace Smith was found, her body was entirely nude and a ligature around her neck.

VI. INJURIES

those contused lacerations are skull fractures numerous identical the bodies Moore, indicates significant contused lacerations of the scalp. Additionally, bloodless abrasions which location on both bodies. Extensive о Н Caryn testimony of Campbell and Melissa Smith. areas of similarity of injuries the pathologists, Dr. Clark and the doctors Both bodies also exhibit in find significantly virtually the Both bodies beneath

area o f The the doctors left ear. further In both find on each body, lacerations instances, they find

the location of these lacerations strikingly similar

npon the that hands or arms of the victims. The doctors further there r, no evidence of defensive find from their marks. examination Particularly o f

VII. WEAPON USED AND MANNER OF KILLING

consistent with all of the injuries on the body of both victims underlying the severity of the head wounds causing contused lacerations significantly, that weapon vicinity with skull fracture. before doctors have of the left the injuries to the left ear and the Court examined the People's Exhibit Both ear and find that weapon ı, o f doctors likewise consistent with the size, nature each victim. the find to lacerations the crowba

VIII. CONNECTION TO THE DEFENDANT

two Bureau of interior pamphlet taken in a search of his denied to gasoline charge tickets elonging hairs Bundy the Wildwood Inn marked o f was of the vehicle previously owned by Mr. Bundy Caryn Campbell. the which have been identified by Robert Neill Investigation, and seized by authorities found in the trunk to the defendant, establish that he signed two Officer o fi records evidence linking Caryn Thomason that he had ever been in Campbell is of purchases by Chevron credit as being microscopically in Glennwood Springs, Colorado, One ín of that vehicle. o f the Defendant to that publication. that the vehicle previously these hairs was found residence in October of 1975, on August Although Mr. Bundy the abduction like the head Colorado, o f card 21, and the in contained the dated 1975, owned by Federal

o f testimony eople's Further Exhibit o f the evidence "Q" pathologist with o f the connection is concerning injuries to established the consistency Caryn

January

12, 1975.

his that presence in August, exhibit having been seized from the Defendant's 1975 car

Melissa Smith and the connection of the defendant the consistency that hair found in the vehicle of Melissa Smith. October The Defendant 0 £ o f 1975, People's Exhibit "Q" with the injuries is tied which has This connection is previously to the Melissa Smith case found to be microscopically owned further ЬУ to Exhibit the corroborated defendant Ъу "Q." and

the DaRonch and defendant as her abductor of November 8, established by Defendant's vehicle with the known hair The defendant's Ъ-у her the direct microscopic eye witness connection comparison of a t o testimony identifying the 1974. sample Carol hair found DaRonch action o f Carol the

VI. CONCLUSION

drawn facts distinctive abduction and murder recited above with the therefrom, clearly t o People establish the identity of the perpetrator. 8 8 t o submit ъ́е the that and establish show trade reasonable the similarities established by ф mark of one individual, common scheme, a modus inferences design and plan operendi that and thereby may be sufficently

o f involving Caryn establish the disappearance Campbell The People therefore, are the abduction of Carol DaRonch, on November the identity and the modus admissible and murder under submit that the transactions the law previously outlined o fi Melissa operendi Smith, of the killer on October 8

Respectfully submitted

FRANK G.H District G.E. TUCKER

Attorney

Deputy Milton K. Blakey District

IN AND FOR THE COUNTY OF EL PASO Criminal Action THE DISTRICT COURT OF COLORADO C-1616

THEODORE ROBERT BUNDY TE OF COLORADO COLORADO, plaintiff,

MEMORANDUM OPINION

AND

ORDER

On May 16, 1977, defendant filed a Motion To Suppress Defendant.

A hearing was held on that motion and others beginning November advisory counsel Kevin O'Reilly, Esq. and Kenneth Dresner, The People Judicial District, each of whom had been appointed as a Deputy District Attorney in the Ninth Judicial District for the purpose filed, Deputy District Attorney Milton Blakey, Defendant represented himself and was assisted by designating the specific items sought to be suppressed. On June 7, 1977, a supplement to motion to suppress were represented by District Attorney Robert Russel, Esq., both of the Fourth Esq. Esq.

of this case

Volkswagen automobile apartment on August 21, 1975 and items seized from a Volkswagen credit card slips dated January 12, 1975 and January 13, pursuant to search warrant issued on October 3, 1975, In each case, violated his constitutional right to Defendant seeks to suppress items seized from his it is contended by the defendant that the search on August 16, 1975, be free from unreasonable items seized from his 25

searches and seizures.

argument

of counsel, and, the purpose of ruling on this motion only The Court has on the basis thereof, makes the considered the evidence and the and issues the following findings

following order

All parties have argued Colorado and federal indication in the record that Utah standards in any respect. law; more restr restrictive

Patrol officer Robert Hayward was to observe any unusual activity. Granger is three to four parked in front of his home in a suburban Granger, Utah area alert his custom, southwest the block, which was rather unusual at that late hour. it although he recognized the other three as being neighborhood Volkswagen bug, light tan or gray in color. for some assistance relating to an incident a few blocks away. out at what appeared to Hayward to be the lights on high beam and the Volkswagen took off with its lights the way to pulled over at a gas station and stopped. stop signs with Bundy for his driver's license of the Volkswagen and Officer Hayward got Bundy said "The Towering Inferno". drive-in movie three miles west. Hayward asked what was place but was lying in the back seat. to check the movie. look in, nearby street with its lights out. driver's seat was a small pinch bar. The lights of his car were About 10 minutes later, Salt Lake County law officers called by using his flashlight that the right front seat was not Bundy indicated he was lost, and that he had been to of the chase the Volkswagen with a spotlight. He pursued. of Salt Lake City. Hayward was in uniform in an unmarked About or look that he spent the last few minutes of his duty period clothing. 2:30 a.m. on August 16, 1975, Hayward in pursuit. When he was close enough, he scene, through, and two other patrol cars appeared. Hayward had radioed for assistance during the The Volkswagen went through at least two Hayward observed the same Volkswagen parked Hayward asked Bundy what he was doing in the his car. and car registration. Bundy was out. about to go off duty. As was Hayward asked another patrolman Bundy He observed four cars in He also noted Hayward threw his own fastest speed it could out Eventually, Defendant Bundy He asked Bundy if he could said go ahead. He did not recognize Utah State Highway of his car and asked the Volkswagen in back of One was Hayward miles

opening the door, patrol car and radioed for the county sheriff, as a result of which under arrest for attempting to evade an officer. No Miranda ski mask, a silk stocking and other items. Hayward went to his had observed and said that Bundy had given the go ahead to look in in a brown unlocked trunk and removed some items, including handcuffs found his attention to Bundy, advised him of his rights and placed him seizure took place where he could observe the officer's activities. at the drive-in which Bundy said he had attended. advisement was given. did not obect or attempt in any way to interfere with the search of his vehicle or the removal of items therefrom. alcohol or drugs. uniformed deputies arrived. on the right hand side. One or more deputies went through the car including the Hayward learned that "Towering Inferno" paper bag in the trunk. After the search of Bundy's car cooperative and offered absolutely no objections. appear to the officers to be under the influence of Hayward saw a small satchel next to the driver's Throughout this entire procedure, Bundy was He looked in the satchel and saw a Hayward informed them of what he The search and was not Hayward turned playing

Bundy he was going to take the Attorney and Bundy said, "Fine." junk accumulated through the years. Bundy acknowledged that the items taken were try to get a complaint for possession of burglary items and give them to the County Deputy Ondrak told under his

until after the search was well in progress, Hayward testified Bundy was never free Although Bundy was not formally placed to go from the moment that the Volkswagen was

Search of Apartment on August 21, 1975: Facts:

charged with possession of burglary events surrounding On August 21, 1975, Theodore Bundy was the stop of his Volkswagen vehicle on August tools resulting from the

16, contacted at table involved talking with him because standing. fully advised of those rights, Ø the matter. and Bundy discussed for Bundy gave questioning. Forbes pertinent card which he 1975. consent the County. conclusion of services and two Bundy time made asked Bundy in the He part Forbes advised him of his Miranda form with him which he read to Bundy. an explanation for no was not about 3:00 said he wanted to Bundy was taken SPM He chairs. of an attorney and never He promises to him and abduction of a carries understood the placed in the Mas the for the under the influence of alcohol cooperative throughout Forbes p.m. interview of approximately consent to search his for that purpose. items which had been his by Deputy Sheriff Ben Forbes car matched the description indicated that he was to a small room which each. young girl from the Salt he cooperate to clear up rights of which he was stated he wanted to made no Lake Bundy asked Forbes to County Jail where he never After threats to him. and exhibited no animosity. rights, found apartment. Bundy had been indicated The 45 Fashion Place Or in interested contained a the misunder minutes reading form reads stop talk about his advised and drugs. of of He had car the a desire Ø Salt from car SEM in and in

conduct located hereby aut premises, constitutional above OH This written permission named Deputy Sheriff(s) named Deputy authorize me Theodore, materials Salt complete onal right I right to refuse to consent take Lake Ben Forbes lst ounty Sheriff's Desearch of my premise lst Ave. #2. The from my R. or other of not Bundy, mentioned without a fuse to consent to su kind. property have a having is being given by me voluntarily and wit These deputies premises/vehicles search made been /veh which they may Department, Thompson, informed such les search D any of search Deputy Of warrant letters, author- . desire

Bundy agreed Forbes agreed to to consent that. to the The form search BEM given to if he could be present. Bundy and he filled

threats

TO

promises

any

name and signed it.

cases other than the Carol DaRonch Although the sheriffs' interest case, on in Bundy extended mention of that

made to Bundy.

Warner to Bundy's apartment at 565 1st Ave. indicated in a different car were sheriff's officers Jerry Thompson and Bernardo. several items therefrom. consent but on the contrary was very cooperative in permitting them slips which are subjects of the motion to suppress. It has been credit card charge slips which led the officers to two credit card stipulated that these slips came into the possession of the law Bundy expressed no unwillingness to the removal of the items from enforcement officers as a fruit of the search of the apartment. his apartment. calm and agreeable. conduct their search. influence of alcohol or drugs. Later in the day, Bundy was taken by Sheriff's Officer to any of them at any time that he wished to revoke his Bundy let the officers Throughout the search he was pleasant, talkative, He did not appear to the officers Among the items removed were certain They searched the apartment and removed in with his key. Accompanying them He never to be under

advised that their interest extended outside the Carol DaRonch to violent crimes in which women were the specifically advised of a right to revoke his consent to the search. entire search required 90 minutes or less. Bundy was The officers were looking for anything in any way in custody during the entire search and was not victims. Bundy was never

necessity of Bundy's of possession of burglary tools was dropped without the Shortly after the search of Bundy's appearance. apartment,

Seizure of Volkswagen in October, 1975: Facts:

On September 17, 1975, Theodore Bundy sold to Bryan

transferred to Severson and he retained exclusive possession of the vehicle until the 1968 Volkswagen which Bundy then owned. Title was vehicle after the sale 14 was seized by law officers. Bundy had no

On October 1, 1975, Deputy Jerry Thompson

one warrant before a judge of the city court of Salt Lake in the State Volkswagen in question there existed "one small black revolver, one earring, white in color round shaped with gold clip, one gold fastened by ladies wallet containing papers and identification of Carol DaRonch." Volkswagen used in her abduction, that "recently the aforedescribed tion of Carol DaRonch on November 8, Exhibit she felt had committed the aforedescribed offenses. known as Theodore Bundy from a group of photographs as the identified the 1968 Volkswagen the vehicle is registered to Theodore Bundy. were left inside the vehicle during the vehicle and the search thereof to find the above Exhibit D The warrant was signed by the judge of the city court of on October 1, Utah. brown leather ladies purse with zipper top, shoulder strap County Sheriff's Department executed an affidavit for search vehicle used in the attempted abduction by personally examining while parked on a public street in Salt Lake City, Utah." Carol DaRonch, picked out the photograph of an individual D (11-14-77). He stated that he had reason to believe that (11-14-77). a warrant was issued authorizing the seizure two gold rings and the stitching on each side unsewn, 1975. The affidavit states that the items in question The affidavit beetle refers to the attempted abduc-1974, her description of the described above as being abduction attempt and that On the basis of that listed items. Also, in of the Salt individual she has

occasion and hair samples and other items have been taken the Volkswagen has been searched on more than one by the On or about October 3, 1975, police and the Volkswagen was seized. the warrant was presented Subsequent

earch of Volkswagen on August 16, 1975: Conclusions:

not violate defendant's constitutional protections search of defendant's Volkswagen on August 16, People rely upon defendant's consent to establish against unreason-1975, did

able searches and seizures.

with the voluntary consent of the person whose place was searched satisfied constitutional standards. Accordingly, they have the burden of showing that the search Phillips v. People, 170 Colo. 520, 462 P.2d 594 (1969). standards. is reasonable 525 P.2d The People did not have a warrant to search the vehicle. Capps v. People, 162 Colo. 323, 426 P.2d 189 435 and does not violate state or federal constitutional (1974).A search conducted without a warrant but People v. Hancock, 186 Colo. (1967);

sense is whether the consent was voluntary; whether a consent was surrounding the consent. voluntary must be determined from the totality of the circumstances 2041 a claim that the search is unreasonable in a constitutional test (1973);for whether a consent to search is sufficient Capps v. Schneckloth v. Bustamonte, 412 U.S. People, supra

People v. Hancock, supra, at page burden of intelligently and freely given. proof in that determination "rests firmly on the People" Colo.Ct.of App. No. 76-542, decided November 3, 1977. The overriding inquiry is whether the consent was 18 "by clear and convincing evidence". People v. Hancock, 33. It has been stated that People v. supra. The

happened and directed his son to open the van door. advisement was given that the father following the incident and advised the juvenile and his father of court voluntary consent was found to search a van Miranda rights and asked if they could look in the found the consent to be voluntary but held that advisement officers went to the suspect's house at 5:30 a.m. stated he wished to do everything he could to v. Hayhurst, No. 27748, Colo. by a juvenile The most recent Colorado Supreme Court case on the subject to the search. in the severe beating of another juvenile. No search warrant was obtained. and S.Ct. 11-21-77, son had a right suspected to have The trial find out what in which van. to the morning The

right to refuse to consent the evidence. The Supreme Court held that: was a condition to admissibility of

a particular and such a wa factor to be "While other consent evidence proof that SPM case considered voluntary, is often quite adequate oluntary, knowing, and an certainly express given in. knowing, determining advisement would lighten en - would be to prove that s given in that burde persuasive

In Hayhurst necessary." Hayhursts' exhibited any signs of force or attempted evidence the officers claimed any right to search Court held consent was voluntary, the Court found it noteworthy that: "Given these facts, and no additional advisement was We that there was no to conclude that deceive the Hayhursts. the vehicle, the

in determining whether the consent was given voluntarily. suspect in custody before requesting simply one aspect It 18 concluded of the totality of circumstances to be considered that lack of Ø consent Ø Miranda advisement ç search is 40

cooperative approach in responding to attempt to deceive the defendant. expressly He did not do so. have objected when the officer exceeded the scope of response authorize. the nature of the search became more upon discovery by a constitutionally valid search. reasonably have been considered by the police from his other officer claimed no search. student If, car. left implements or was not In the present case, defendant, He impliedly threaten the use of force. He was fully able to determine whether as defendant contends, the request the authorized scope of search ambiguous, he could at expressed no objection or reluctance to allow the The the University of free to leave the scene. He did not object nature of crime right of the items in their totality could to which were appropriate search the vehicle. Defendant was present throughout Utah. extensive than he intended to to the officer's the although not He He seizure of any items Was as adopted a to search and his not burglary tools He did not 当た inquiries. for seizure Defendant He did not authorization under formally some

permit the was conducted pursuant to defendant's consent, which was voluntarily, that, considering the totality of the circumstances, the search Search of Apartment on August 21, 1975: Conclusions: freely and intelligently given. 554 P.2d 688 (1976); People v. Supreme Court with respect to consent searches see People v. Wieckert, freely and intelligently made. that defendant's (1971); and People v. of alcohol or drugs. search was his own considered decision, voluntarily, decision to adopt a cooperative stance and to Sanchez, Reges, 174 Colo. 377, 483 184 Colo. 25, 518 P.2d 818 (1974). For other expressions of the Colorado The evidence is clear and convincing The evidence is clear and convincing P.2d 1342

the search of his apartment on August 21, 1975, did not violate defendant's constitutional protection against unreasonable searches seizures. The People rely on defendant's consent to establish that

the Volkswagen is applicable to the search of defendant's apartment law cited above with respect to The People did not have a warrant the August 16, 1975 search of to search the apartment.

possession of burglary tools when he was Bundy accompanied the officers on the search. right to search the apartment. Bundy a consent the interview. search of his apartment. threaten use of force. constitutional right not suspect in the Carol DaRonch incident. Miranda rights, defendant freely discussed with Deputy Sheriff an explanation for each. Defendant items which had been found in his vehicle consent After Forbes requested consent to search, he read form which specifically advised him that he had Was containing such language. He did not attempt to deceive the defendant. in He was advised to have the search made. custody, He did not expressly or impliedly Bundy was fully cooperative during incarcerated at the time that he was asked to consent to After being advised of Forbes claimed no He was fully cooperaand Bundy signed and defendant charged with

He was not under tive throughout and made no objection to removal of items from his circumstances, the search and seizure were conducted pursuant to apartment. defendant's clear and convincing that, considering the totality of the Defendant was a law student at the University of Utah. consent, which was voluntarily, freely and intelligently the influence of alcohol or drugs. The evidence

Seizure of Volkswagen in October, 1975: Conclusions:

possessory interest in the Volkswagen, and no right of access to the had no reasonable expectation of privacy with respect to that vehicle Defendant was not present when the vehicle was seized. Defendant vehicle, after it was sold to Brian Severson on September 17, 1975. undisputed that defendant had no property or

Volkswagen. 546 P.2d 1259 Trusty, 516 P.2d 423 (S.Ct. Colo. 1973); People v. Pearson, Defendant has no standing to object to seizure of the See (S.Ct. Colo. 1976). Kurtz v. People, 177 Colo. 306, 494 P.2d 97 (1972); Accordingly,

filed May 16, 1977, is denied in all its aspects H IS ORDERED THAT defendant's motion to suppress evidence

Done this day of

nunc pro tunc December 23, 1977.

BY THE COURT:

THE COUNTY OF PITKIN AND NI THE DISTRICT COURT WITHIN OF COLORADO AND FOR

Criminal Action No. C-1616

STATE

THE PEOPLE OF OF COLORADO, THE STATE

Plaintiff,

BUNDY,

VS.

THEODORE

R.

Defendant,

MEMORANDUM OF LAW CONCERNING ADMISSIBILITY OF SIMILAR TRANSACTIONS

Frank G.E. Tucker, District Attorney 506 E. Main Aspen, Colorado

Milton K. Blakey, D District Attorney 20 E. Vermijo Ave. Colorado Springs, C Co 80903 Deputy

George Vahsholtz, District Attorney Deputy

es.

defendant's are S ec. matter essentially discretionary, so **balanced** 1361. 186-191, of. The conduct or state of law and certain admissibility of similar p.442-459, t o bе decided by the trial judge. Stull procedures ۷. mind long as certain considerations People, 140 followed, on offenses a particular occasion is McCormick Colo. s S proof Admissibility 278, on Evidence, o f 344

C charged. C Rules of Ъ e1 consider Colorado urisdictions. onfusion, olorado ement 452, particular purpose of the offense, the availability Bar Association Evidence Evidence, Colorado Lawyer Vol. 5, No. 12, p.1810 Advisory Committee's law and federal The judge balances relevance and probity against The delay and waste of time. test The o f similar admissibility McCormick or law on relevancy "are o f ш offense must other part of the Res Gestae Note on Code Review means of proof on that on Rule 404 of the Federal is basically Evidence In addition, be substantially Committee indicates 2d ed., Sec. essentially the same in all the of the crime judge must relevant 190 particular (wherein prejudice the same.") about

design, modus introducing other offenses Or The accident; operandi, knowledge, House Committee on the Judiciary to establish motive, intent, identity had this intent, or lack t o preparation, say

wrongs, or acts is character but may This ied rule s, or acts is not admissible to pacter but may be admissible for ot purposes such as proof of motive. provides that evidence o f other: other crimes speciĦ

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Although your camending the ruthe use of the crimes, amending the rule itself, it the use of the discretionary respect to the admissibility crimes, wrongs, or acts is no any wrongs, or a any arbitrary committee discretion sees es no necessity
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403, i.e ge. Rather, it is anticipated that with pect to permissible uses for such evident trial judge may exclude it only on the is of those considerations set forth in i.e. prejudice, confusion or waste of ed that with such evidence, time." Rule

evidence, preparation, plan, knowledge, identity, modus operandi or ۷. 96 ۲. elevance mistake Henderson, Pac.556, Gestae of the criminal episode, eople, and probity must go to motive, opportunity, intent relevance Before 442 P.2d 406, or accidents unless the crime charged was part Stull v. 559 P.2d 1108, Rule 404, the court and People, probity People v. Lobato, 530 .P.2d 493, can allow 140 Colo. 278,344 P.2d 1361, must be shown. Warford v. Ф similar Federal Rules transaction into People, 43 That of Evidence. People absence Colo. 107, o f Henson

offense, transaction is "sufficient evidence ъ. 452. must People The be "substantial," burden of proof on the state ۷. Hosier, to connect" 525 P.2d 1161. McCormick the on t o McCormick indicates defendant Evidence, introduce t o 2d ed. ρ the offered similar Sec the

purpose P simply ound at .447-478. crime on numerous may inapplicable, than to show a probability pages be offered, and when so offered, the rule of exclusion Relevancy Some of these other purposes for which evidence trial because he 448-451 must be "substantially McCormick on of his purposes is a text. Evidence, that McCormick refers man of criminal that he The ten he enumerates relevant" (defendant) 2d ed., Sec. of other character. There for committed criminal some 190, to are other

by proving its immediate of near in time and place. The characterized as proving a "same transaction" or the "T0 complete the he story of immediate c d place. Th This a part context of happenings is often gestae. o f

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- (2) "To prove the existence of a larger plan, scheme, or conspiracy, of which the present crime on trial is a part.
- (3)commission them as nearly repeated prove other like nearly identical : n as the handwork must more is ρ ed burglaries of the same class, such be so unusual and distinctive as to signature." like e crimes by the a in method as to k of the accused. accus earmark Here
- (4) acts by th probative sexual for th "To show a passion or propensity for illicit sexual relations with the particular person concerned in the crime on trial. Other like cases si barrier 0 S certain courts prejudice other involved unusual and distinctive that so by the accused with anyone bative of like acts upon the volved in the charge, but the persons for this purpose. I show signs of lowering this er to admission. have in crimes s purpose. It has be unnatural sex crimes ı, likewise with other ose. It has the past excluded such acts we the past excluded such acts we have recent persons do no as been argued cimes are in th occasion danger of previous are particular themselves not qualify strongly that o f such with
- (5)"To show, by similar acts or incidents, that the act on trial was not inadvertent, accidental, unintentional, or without guilty knowledge."
- 6) "To establish motive. This in turn may serve as evidence of the identity of the doer of the crime on charge, or of deliberateness, malice, or a specific intent constituting an element of a specific crime."
- (7) "To show, by immediate inference, malice, deliberation, ill will or the specific intent required for a particular crime."
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 of other
 It is bel
 identity
 of adm the second device) and resorted to of admission, but that the evidence follow, as an intermediate channel, more of the other theories here list the second (larger plan), the third device) and the sixth (motive) are resorted to for this purpose." prove identificate purposes in the ultimate purposes in the other criminal conduct other criminal however, believed, however, the type is not ordinarily the evidence that ly of s is accepted as on for which evidence will be received. channel, some one or here listed. Probabl he third (distinctive ы a need for provitself a ticket most will often proving usually Probably

(9) "Evidence of criminal acts of accused, constituting admissions by conduct, intended to obstruct justice or avoid punishment for the present crime." •4

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(10)stand "To of crime. impeach as ach the accused when a witness, by proof he takes the his convictions

evidence contained in the similar Rule adequate "unfair Advisory though not necessarily, Confusion or tendency value confusion, indicates esigned "need primary court 403 is prejudice within its (Rule 403) context means undue admissibility" relevancy, to suggest decision on an improper Committee's Notes on the Federal Rules of Evidence to exclude relevant (Exclusion of Relevant substantially outweighed by the danger of unfair toward admissibility, that source of evidence delay the Waste evidence should be admitted. prosecution can show 70 of Time). 70 Yale Law Journal waste of time. is strengthened by the comments of the an emotional one." evidence of a There the committee states: Evidence on Grounds of Prejudice providing the state offense, necessary Thus, р except when its genuine 764 (1961). j f that basis, commonly, Rule element, Rule 403 similar need should influenc 403, shows This idea for offenses probative is not prejudice are

0 Crimes, as erms ther he authors say: been asked to of motive, intent, plan or design, Identity and Vices, Rule used in 404 leading law review article, Other Ъу the Advisory adopt the Crimes, Federal Rules of by the 41 Iowa L. Committee, defines Colorado Rev. Slough Bar Association). There Evidence 325 (1956),and Knightly, (which Colorado the elusive Inseparable cited

indulge in Evidence, S o f "Motive feeling may that impels a criminal a Sec. 117,118 Sec. s and tempts the mind to act," citing 1 Wigmore, 8 (3d ed. 1940). a S an inducement 70 state

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of mind which negatives accident, inadvertance or casualty," citing 2 Wigmore, Evidence, Sec. 300,302,307,363 (3d ed. 1940). "Intent spells purpose to use a particular means to obtain a desired end, whereas motive supplies the reason that nudges the will and prods the mind to indulg the criminal." 41 Iowa L. Rev. 329-330 indulge

To bе Ф similar offense, according to the author

least intent."..."It "Evidence sufficiently of another must so to allow for some probative bе crime must shown that the prior cast some light acts are npon value;" similar, defendant's at

"Knowledge signifies awareness," 41 Iowa 329. Rev.

"Plan or Design refers to an antacedent condition which evidentially points to of the act planned," citing 2 Wigmore, Sec. 300,304 (3d ed. 1940). Evidence, the do doing

similar o f but distinctive plan of behavior or doing such evidence to the facts surrounding things may plans are woven on the basis of dissimilar JΙ" the facts is to identify the accused by means strongly evidence surrounding crime crime B, operation. plan in the A are inherent value certain instances A strikingly peculiar method events," of proving

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"Identity - "The quality of sameness figur important when pondering the admission of crimes to prove Identity. Here one seeks features in another crime to point up the that the accused was the perpetrator of thin question," citing - 2 Wigmore Evidence question," cit (3d ed. 1940) the ling of the crime rof the 306,410figures out liklihood other common

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Rev.

p.330.

"Inseparable Crimes - linked in point circumstances with crime charged that be fully shown without proving the otl lowa L. Rev. p.330. the other," 41 o f time

continuing course of conduct, guilty ction because it aine in prior year old drug conviction in a foreign case source motive the prosecution asked to introduce to show intent, design, of U.S. v. Recently, same 0 ٢ identity. transaction, 1 was similar New Delhi, March Nolan, 551 F.2d 266. 22, 1977, The court in these regards: marijuana in India; the tenth circuit decided allowed the other transknowledge, capacity, (3) jurisdiction (England) That case involved Same case at kind of (1) issue; narcotics habit

principles and rules for admitting similar offenses In deciding the case, the court noted long standing

base of wooden lamp.

Freeman, 514 F.2d 1184 (10th Cir. 1972); United States v. (10th Cir. 1972); United States v. Pickens, 465 F.2d 884 (10th Cir. 1972); Pickens, 465 F.2d 884 (10th Cir. 1972); United States v. Pauldino, 443 F.2d 1108 (10th Cir. 1971), Cert. denied, 404 U.S. 882, 92 S.Ct. 212, 30 D.ed.2d 163 (1971) United States v. Eagleston, 417 F.2d 11 (10th Cir. 1969). The evidence in question (10th Cir. 1969). Freeman, -Freeman, -Freeman, -19 mands, i ception. need motive, charged mistake or Rule does clusion by should not meet conviction. "Other each of the above cited cases was not that a criminal conviction, but it was that criminal activity. It follows, then, that have evidence not may 404(b), not require knowledge, identity, or United it is still admissible under n. Furthermore, Fed. Rules o 04(b), 28 U.S.C.A. supports t required under Rule 609 of the f Evidence." be a repeatedly accident. U 14 F.2d 1184 reference to crimes, wrong; introduced under this exception a constitutionally valid criminal Even if Nolan's British conviction eet our federal constitutional deerence to admission of evidence s, wrongs, or acts." That the d under held c alleged prejudicial purposes proving that States this evidence exception such Federal o f

We hold for the for the purpose of proving a common plan, mot opportunity, intent, knowledge, identity or a of mistake if relevant and material to the ch and issues raised in the federal prosecution. The proof of Nolan's British conviction was u for these purposes in the instant case." is admissible to That issue is not need not that an alien conviction is purpose of proving a common aity, intent, knowledge, ide decide ecide if a British conviction to prove guilt or enhance punishment not before us. was used or absence motive charges

"The general rule is that evidence of illegal activities other than those charged is ordinarily inadmissible. There are, however, several well-recognized exceptions to the rule, including receipt of such evidence in order to prove motive, opportunity, identity, absence of mistake or accident. United States v. Freeman supra; United States v. Burkhart 458 F.2d 201 (10th Cir. 1972); United States v. States v. Pauldino, supra."

however, is admiss in the sense of the above rule of our Court.
Rather, it would allow the admission of uncharged illegal acts unless the only purpose for their admission is to prove the criminal disposition of the defendant. We hold that under either rule however, the evidence of Nolan's prior conviction admissible." note that Rule 404(b) is not under either rule, exclusionary

"The probative value of proof of the commission of the prior crime must outweigh the prejudice. Rule 403, supra. This determination is properly within the trial judge's discretion.

United States v. Baca, 444 F.2d 1383 (10th Cir. 1976), U.S. Appeal Pending; United States v. Baca, 444 F.2d (10th Cir. 1971), cert. denied, 404 U.S. 979, 92 S.Ct. 347, 30 L.ed2d 294 (1971).

A critical issue in the case at hand was Nolan's intent and knowledge. Proof of the British conviction was very relevant in the proof of those elements of the crime. In view of its obvious probative value, we hold that the trial court did not abuse its discretion in admitting this evidence."

In United States v. Parker, supra, we announced some guidelines to test whether evidence of unchaillegal acts should be admitted: (1) the evidence must tend to establish intent, knowledge, motive identity, or absence of mistake (2) the evidence real portation of intent, know. mistake tation of contraband that it serves to establishent, knowledge, motive, identity, or absence mistake or accident; (3) the evidence must have 1 probative value, not just possible worth; and uncharged illegal act must be close in time to crime charged. See also: United States v. establish uncharged

and cases have long been the rules applicable in Colorado. wielded distinct intent. the often cited case of Warford assault charged, involving the same parties, held an assault, occurring three-quarters of 556, the by the defendant, was admissible to show motive and The court specifically said admitted as transaction, similar enough to be admissible The rules espoused in the preceding tenth circuit Supreme Court stated the same rule and exceptions part of the Res Gestae but as a separate V. People, 43 the similar transaction and a pistol an hour after Colo. 107, In 1908,

412 p.2d 227 (murder), Abshire v. People, 87 Colo. 507, 289 allowed assault), the theory Henson v. People, 442 p.2d 406, (checks), the other transaction, whether similar or dissimilar, 974 Bell v. (murder), People v. In numerous (kidnap-rapes). and interwoven as to be inextricable from the crime that the separate crime was People, cases since then, the court would have 406 P.2d 681 (murder), People v. Litsey, Plotner, 534 P.2d 791 (2nd degree part of Segura v. the Res Gestae,

admission of similar transactions on the Res Gestae terwoven evidence rule and the other major rule of admissibility infant. leading case similar deliberation in the crime charged, rather both other deaths were fetus'. found in (1945).preconceived crime in or dissimilar crimes but remote The court said the reference was alright because the same trunk. When the death was discovered, two other fetus' were In that case a mother was charged with killing her of tragedy and inexperience, and Occasionally, the Colorado Supreme Court has justified in issue and (2) "admissible otherwise in proof of plan of disposing of this area is William v. People, similar offenses: (1) interwoven with Reference was made to the defendant's offspring. in time. also than the frantic in 158 p.2d 447 Probably the proof of

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petrator of the crime." purposes rather than as part of the Res Gestae. Stull, defendant possession of the three bodies strengthens the p.697 (1925). ť 344 P.2d when the similar offenses were admitted for specific strengthens in whose possession they were found as the The court 555. the presumption and proof of life, See also May v. People 29 Colo. 178, indicated that a limiting See also People identification

subsequent establishes that defendant is guilty of and that such evidence is not inadmissible merely because repeatedly transactions before and after the offense charged (couple of o f design or scheme, and establish defendant's before and one month after). The court said, "It has o f defendant on trial for a specific offense has participated crimes," p.441. 200 whether subsequent crimes could be admitted 381,243 P.2d 762 (1952), on embezzlement, admitted similar related offenses, or a design to commit a Perry v. and thefts. prior crimes," p.441. offenses, in order to establish either motive, intent, been held by our court that to the crime charged are admissible to show system, when they People, 181 P.2d 439 "tend to prove plan, system, habit or Another interesting case, The court held that "Similar offenses The case involved a series of it (1947), decided another 18 competent to show offense." Ray v. People, identification, series of as

Was "logical ruled necessary in Webb v. People, 97 Colo. 380 connection between the two independent offenses" to prove identity of the offender, People v. Ihme, (1974), as The court long as the People establish the has been especially liberal allowing similar 262, 49 P.2d necessary which

allowed claimed he was an innocent bystander. the defendant. to place in evidence, a previous the defendant The court ruled: was accused of selling illegal drugs transaction The prosecution was between police

"It has been stated that this exception

174 Colo. engage in a certain criminal activity, and it especially dispute," (citing McCormick on Evidence, Sec. 190 (2d ed. 1972). cases where motive, identity of the actor, and intent ۲. ۷. Williams v. People, Orr, 1, 481 P.2d 417. Dago, the 566 P.2d 1361 (Colo. 1977), Leyba 497 P.2d 1261 (Colo. evidence shows a larger (I.D. motive and design case) supra, 1972), (Identity continuing v. People, case),

jury of limited transactions is the instructions should be couched in words such as "other Supreme Court found error, ruling that if remote similar be presented: (1) the of similar acts, (2) if court admits, it must case without giving a limiting instruction. jury allowed several similar acts Another very important case in the area of similar should again limit use of the evidence, and Stull v. People, 344 P.2d 455 (1959). purpose of the admitted evidence, prosecutor must advise court to be admitted (3) instruct transac

character of such (similar this burglary, conspiracy and bribery case, that "time and comply with the offenses) occurred at or of their People, and be admissible as a similar transaction, there 377 P.2d 125 (1962). The court emphasized admissibility. collateral acts are important in the determust "degree of similarity" and "time" rules bе р substantial degree The evidence must about the time of similarity o f show that the act in the

transactions, other

acts" or "other conduct."

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offense was admitted. The court page 128. of similarity is largely left 70.) between them. admissibility of evidence to establish the exception may turn the case In practice, the proximity in point of time and the posture being tried except for the victim, who was entirely Later on that (cites of the Kostal case." same ۷. In to the discretion of the trial court, page, the court notes that People, found it the Clews 144 Colo. 505, to be a case, another similar facsimile of 357 degree

cheme, urglary was eople v. enlarged plan or design, Martinez, 549 P.2d 758, a burglary case where another In admitted as a similar transaction to show common the the number more recent cases, the Colorado Supreme Court ı, of exceptions illustrative. to include modus The court stated: operandi.

different

v. Simms, 185 Colov. People, 178 Colovinos v. People (1969). In People of other cri guilt: Peop (1974); Peop 654 (1974). used 1044. o f Howe defendant was being tried in pother areas where the burglaries in the methods used in obtaining Colo. at 200, 526 P.2d at 646. admissible twelve days admissible another burglary. since it "was of a closely related to of one burglary another burglary evidence its ۲. general rule. ence of simil Consequently, evidence of eac on at 200, 526 P.2d at 646. For v. People, supra, evidence of edays prior to the theft chesible since "(t)he same moduon both occasions to relieves property." 178 Colo. at 2 the he general r criminal v. People v. People v. There are exceptions, however, to cal rule. We have repeatedly held that of similar criminal acts may be admitted a common scheme, plan, or design. People, 185 Colo. 214, 523 P.2d 463 (1974); Howe, 178 Colo. 248,496 P.2d 1040 (1972); howe, People, 170 Colo. 336,460 P.2d 774 In People v. Moen, supra, evidence arglary was presented in a trial for burglary. We held the evidence admissible even in a iminal acts may not be acted by the second of the second o each burglary would in a separate trial transaction the transaction upon tried in point of t tried in point or tried, burglaries were committed, in obtaining entrance." 186 , t is idence of a theft committed theft charged was held ame modus operandi was relieve the same victim apparent similar in nature and 265,496 e admitted to s . 48, 528 P.2d . 196, 526 P.2d that for that in have be admitted P.2d which the admissible evidence been 2dther show d 380

sufficient to introduce it is clear that the destablished beyond a destablished second and the stablished second and the stablished second sec when the crimes resulted in appellant introduce hat the tra is incorrect reasonable doubt, 451 (2d ed. 1972.") crimes is admissible only ted in convictions. It use evidence of criminal transaction need not be in asserting that

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Henderson, 559 P.2d 1108 (1976). (1974), People v. Moen, 526 P.2d 654, .2d 661 (1972), People v. Simms, similar transactions are People v. cases on common scheme, plan or design or modus operandi 523 P.2d 463, and People v. Hosier, 525 P.2d 1161, People v. Lamirato,

sister by the defendant, who was the babysitter. design, intent, guilty knowledge, or modus operandi. similar offense was admissible to show defendant's plan, scheme, the similar transaction admitted was the beating of the victim's The Hosier case concerned a murder of a child where The court said

where the other transactions are so connected in point of motive, scheme or design and added "especially this is true with the offense under trial and so similar in character that a admitted. plan or scheme can be imputed as to all of them." The "so method of gaining entrance. Entry was gained by use of a plastic to slip the locks on the doors. language referred to the area of the burglaries and Moen was a burglary case where a similar incident was The court cited the exceptions of intent, plan,

was charged. The nature of the act, viewed in the light most said at page 1115: "The transaction here was in close proxconcealed imity to the store and returned for more goods. She was arrested. to the prosecution, was relevant to show scheme, plan the items under her clothing, Henderson was a shoplifting case where time and place of the acts with which removed them from the the the defendant The court

design

104 Colo. 229, 90 P:2d 5 (1973).

shoplift clothing from the store."

See

also

Bacino

THE PROPERTY OF COMMENTS OF THE PROPERTY OF TH

OTHER JURISDICTIONS

VI

(Kansas show identity of 1922.) The A leading facts and pertinent part of the case the murderer case where similar murders were introduced is State v. King, 206 P.883

involved in this evidence, cure come of which is strenuously challenged, tender to show that in 1906, while this same livery barn was in King's possession, one William T. Ringer, a Nebraska peddler, whe wandered about the country attending publishers and selling cheap jewelry which he made of copper wire and small shells, can to King's livery barn and made it his he quarters for some time. Ringer disappea He was last seen alive by King. After h personal e (King was "Dawson, J. convicted Woody, his possession and exercised ownership over Woody's two hogy, and harness, and even had personal effects of Woody's a Woody's disappearance in indicating that V by strangulation or thereabout. admission in evidence of two other murders which came to the time Woody's skeleton was for the time Woody's livery tenso August, 1919, the skeles found buried face down very barn lot under the thereabout. The hyoid lst of April, who worked for was never principal error h he relies for year. the ime Woody's skeleton was in y barn lot in 1919, and where narrated to the jury yed in this evidence, the were which crime Maple relies for rent in evidence the skeleton had been fractured, g that Wood's death had occurred ulation or similar violent means. last seen alive by King, and aft 1st convicted . The defendant Rufus of the murder of one ch crime occurred on ked for King in the spr King then operated a late of Hill, in Wabaunsee of the State of April Woody disaled afterwards seen aliver afterwards seen aliver 1909. d of murder.) King appear or series of error upor reversal relate to the nce of facts pertaining twhich came to light about Woody's as skeleton o Wabaunsee county. Woody disappeared in the 1909 seen alive. Leton of Woody Woody o horses, had such manure pile bone of the d been fractured, jury. the c one King, and 9 King had rights of s found or was in his spring of King, way competency disappeared.
After his livery about the The bugin overcoat intimate tended in public Was about one appeals facts after

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disappearance King had in his possession and exercised rights of ownership over all of Ringer's personal property-his deeds to properties in Nebraska, his spectacles, jewelry, and copper wire and shells for making jewelry, his collars, blankets, dog, horses, and wagon. In August, 1919, Ringer's skeleton was found buried face downward in the lot of the livery barn near Woody's body and the skull of Ringer's skeleton showed that it had been crushed by an axe or similar instrument.

The facts tending to show the third homicide which were developed over defendant's objection tended to show that in 1913 a young farmer named Reuben Gutschall residing a few miles from Maple Hill suddenly disappeared and was never afterwards seen alive, and all his property immediately came into the possession of King, and King exercised rights of ownership over it-Gutschall's chickens, hogs, household goods, horses, wagon, harness and

ceptions which are as potent as the rule itself.
Any pertinent fact which throws light upon the subject under judicial consideration, the accused's guilt or innocence of the crime for which he is charged and on trial, is admissible; nor is such probative fact to be excluded merely because it may also prove or tend to prove that the accused has committed another crime or that the accused out to that ceptions who tried of Ringer text-writers. defendant concerning evidence the about ing these crimes involved in these crimes involved in the er and Gutschall when King was been and Gutschall when King was been the murder of Woody? The admination to the crimes perpendent on trial for any specified of theme of much discussion by content theme. 01 the admissiblity of the perpetrated evidence admiss the deaths course, courts offense not admissible bein and has Ъу

Ringer, aspects one of t The extended inquiry made into the details circumstances surrounding the deaths ger, and Gutshcall, so similar in the ects tended strongly to show that the of these victims was the murderer of the murderer of all three. in their dominant o f o f

three crimes was bound to aid materially in disclosing the identity of their common perpetrator. The evidence touching the similiar disappearances of Ringer and Gutschall, King's possession of their property upon their respective disappearances, his

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were and to prove himself of o 0 and statements touching their disappearances, his statements explaining how he came to possess effects, and the facts of the exhumation and discovery of their remains on premises that object. lives admissible and murderer o prove his f of other had been rderer of Woody, Ringer, and ove his motive and system of f other men's property, by ta concealing their bodies to a en in his control, were to prove the common id to accomplish identity of possessing taking their Gut competent his their that

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"The the one People minumum defendant (Robber-Rapist uses same defendant who similarly spinal anyway. gunshot instruction ۷. o f Jacob Denton 28 Peete, Another cord at the resistance, and tended wound missed Mrs. the murderer See allowed the also that 169 case, attempted to sever Mrs. P.2d SEW the Commonwealth neck, where method and admitted to show design.) was likewise proper, since the method 924 murdered, Denton transaction tended to production of produced (Cal. 1946) Logan's identity t o ۲. ω identify instant spinal cord but bullet Ransom, and മ Logan's where similar modus from death with 82 defendant as the Α. operandi spinal cord." behind homicide 2 d court killed 547 identify severin said, was

P. 225 crime," citing modus evidence crimes 98 gically everal modus Cal.App. the ıs said: operandi ۷. is that whether perpetrator decisions have held that operandi o f ordinarily admissible if it McCarty, Haston, inferred "When, final case which must receive another offense 2d 74, common People or 444 is whether there as not 164 that o f People offense and ۷. in the instant case, P.2d 91 to Cal. the crime charged, defendant if both the Peete, the defendant ٧. App. offered to one Houston, (Cal.1968). 169 P.2d 924, 2d 322. rather charged so the test other crimes is some 1. S discloses 219 prove common design, than guilty evidence of other The court further Cal. clear o f ω There the that some primary issue People admissibility and the of one ω App. r t connection comment other distinctive may goes ۷. court 2dcharged 187 person Adamson on 18 at and t o o f rt plan, say:

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guilty of the other," citing People v. Cramer, 429 P.2d 582

Respectfully Submitted, Frank G.E. Tucker, District Attorney

Milton K. Blakey, Deputy District Attorney 2691

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George Vahsholtz, Deputy District Attorney 7179 4th Judicial District

CERTIFICATE OF MAILING

I hereby certify that I have mailed a true and correct coper of the foregoing to Kenneth Dresner, advisory Attorney for Theodore Bundy, pro se, Jordon Bldg. Suite C.,307 N. Main Gunnison, Colorado 81230 and Kevin O'Reilley, advisory Attorney for Theodore Bundy, and Theodore Bundy, % of Garfield County Jail on the 28th day of October 1977. copy for

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IN THE DISTRICT COURT WITHIN AND FOR

THE COUNTY OF PITKIN AND STATE OF COLORADO

Criminal Action No. C-1616

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

vs.

THEODORE R. BUNDY,

Defendant,

MEMORANDUM OF LAW CONCERNING ADMISSIBILITY OF SIMILAR TRANSACTIONS

Frank G.E. Tucker, District Attorney 506 E. Main Aspen, Colorado

Milton K. Blakey, Deputy District Attorney 20 E. Vermijo Ave. Suite 310 Colorado Springs, Co 80903

George Vahsholtz, Deputy District Attorney

SIMILAR TRANSACTIONS

Н

1's а defendant's ar S matter essentially 1361 4 186alanced and certain o f -191, The law conduct admissibility p.442-459, discretionary, t o be decided 9 state of Stull procedures o f S O bу ۷. similar mind on a long the People, followed, trial as certain offenses particular 140 judge. Colo. McCormick ខ្ល considerations proof Admissibility 278, occasion o f 344

jurisdictions. charged. consider Rules Colorado Colorado ement 452 fusion, 0 f particular 0 the 1aw Bar Advisory H Evidence, The The the delay availability and federal Association Evidence test judge offense, The and purpose Committee's o f Colorado Lawyer similar balances waste admissibility McCormick 01 law on relevancy "are o f o f ы offense relevance other part Note time. on Code o f means Vol. 5, no is must be substantially Evidence In addition, the Rule and probity against prejudi basically Review o f Res No. 404 proof Gestae 2d ed., Sec. Committee o f 12, essentially the the on that the p.1810 this o f same judge Federal the indicates t o in all relevan particular (wherein 190 the say mus crime about same.") 0

Ħ troducing other take or modus operandi, The accident; House offenses Committee knowledge, t o on the Judiciary establish intent, motive, identity had intent, 0 5 lack preparation,

"This rule provides that evidence of other crimes, wrongs, or acts is not admissible to prove character but may be admissible for other specified purposes such as proof of motive.

Although your committee sees no necessity in amending the rule itself, it anticipates that the use of the discretionary word "may" with respect to the admissibility of evidence of crimes, wrongs, or acts is not indended to confer any arbitrary discretion on the trial

judge. Rather, it is anticipated that with respect to permissible uses for such evidence, the trial judge may exclude it only on the basis of those considerations set forth in Rule 403, i.e. prejudice, confusion or waste of time."

οf ۷. 9 Res ηq relevance evidence ۷. 6 People, ac. Gestae take ation, 556, son, and probity relevance Before or 442 0 £ Stull plan, the 559 accidents unless P.2d the ⋖. P.2d 1108, criminal episode, knowledge, and 406, court People, must probity People 80 can 140 Rule identity, to allow the must ۷. Colo. motive, 404, crime Lobato, Warford v. Ъе а similar 278,344 Federal shown. modus operandi charged opportunity, 530 transaction .P.2d P.2d People, Rules was That 493, 1361, part o f 01 intent, 43 Evidence People absence of the Henson Colo. into 107,

190, transaction is "sufficient evidence ffense, P 452. must People The burden of proof ъе ۷. "substantial," Hosier, t₀ 525 connect" on the state P.2d McCormick 1161. the Op t o defendant McCormick Evidence, introduce to indicates 2dthe В ed. similar offered Sec. the

are purpose ac ound O 447-478. S numerous crime on may аt inapplicable, than bе pages Relevancy must offered, Some of other to trial 448-451 of show because purposes these and а McCormick probability ъе when so offered, the his purposes that he "substantially for 1s text. no which evidence ф Evidence, that man The 0 f 'nе McCormick ten criminal (defendant) relevant" 2d ed., he rule of other enumerates refers o f character. Sec. for exclusion committed criminal some other 190 to are: are ı,

by proving near in +near in time and place. 'characterized as proving 'same transaction" or the complete its the immediate story o fi e context This is o Ф a part the crime ext of gestae." o f often the on trial happenings

- (2) "To prove the existence of a larger plan, scheme, or conspiracy, of which the present crime on trial is a part.
- (3) so nearly identical in them as the handwork of much more is demanded commission of crimes of used SB bе repeated burglaries like prove other like crimes by the accused learly identical in method as to earmark as the handwork of the accused. Here more is demanded than the mere repeated must α u of crimes of the same class, such ed burglaries or theft. The device be so unusual and distinctive as to signature."
- (4) for this purpose. It has been argued that certain unnatural sex crimes are in themselves so unusual and distinctive that previous such acts by the accused with anyone are strongly probative of like acts upon the occasion involved in the charge, but the danger of prejudice is likewise enhanced here, and most courts have in the past excluded such acts with other persons for this purpose. More recent cases show signs of lowering this particular barrier to admission. sexual c for this certain "To show a passion or prosexual relations with the concerned in the crime of sexual crimes with other propensity for the particular on trial. Oth r persons do not as been argued th rimes are in them previous such are strongly 0ther : illicit themselves qualify like most with
- (5)"To show, by similar acts the act on trial was not i unintentional, or without acts or Luc-not inadvertent, acclu thout guilty knowledge. accidental,
- (6) To crime or the evidence of the identity of the doer of the lime on charge, or of deliberateness, malice a specific intent constituting an element crime." er of the malice, serve the o f
- (7) "To show, by im deliberation, i required for a immediate inference, malice,
 , ill will or the specific intent
 a particular crime."
- (8) identity is not or of admission, but follow, as an intemore of the other more of the the second (device) and resorted to Off To the ultimate purposes for which evidence other criminal conduct will be received. is believed, however, that a need for prontity is not ordinarily of itself a tick admission, but that the evidence will us e other t the for intermediate ther theories sixth (motiv this purpose theore the third plan), the third ixth (motive) are here channel, nannel, some one or ere listed. Probably e third (distinctive e) are most often or proving ticket usually

- (9) "Evidence of criminal acts of accused, constituting admissions by conduct, intended to obstruct justice or avoid punishment for the present crime."
- (10)stand of cri "To crime. impeach В witness, the accused ess, by F d when proof he of takes the his convictions

o f the Rule adequate evidence Advisory Confusion tendency though not value C esigned onfusion primary "need fair court 403 ates 1's prejudice within contained admissibility" relevancy, t o Committee's to (Exclusion substantially toward admissibility, Or Ξf that source necessarily, delay suggest exclude the Waste evidence prosecution can show o f 01 in οf o f 70 decision relevant waste evidence Notes the Time). Yale Relevant outweighed its ĺs an emotional should similar o f on the Federal Rules strengthened Law (Rule on an improper o f time. evidence There bе Journal providing the state Evidence а offense, 403) context means ЪУ admitted necessary the Thus, one." the danger of ρ except Ъу genuine 764 committee states no İf that the comments (1961).Grounds basis, commonly, Rule element, when its similar need should o f 403, Evidence unfair shows о Н This for undue Rule offenses rs S influence probative Prejudice o f not idea prejudice 403

0 4 has the C ther rimes, erms authors been Vices Rule o f 8 8 asked motive, used 404 leading Other t o ЪУ in intent, adopt the Advisory the Crimes, 1aw Federal review Ъу plan 41 the or design, Iowa Rules article, Committee, Colorado Ľ. o f Rev. Bar Slough Evidence Identity defines 325 Association) and (1956), (which and the Knightly, elusive Inseparable cited Colorado There

"Motive may be defined as an inducement or state of feeling that impels and tempts the mind to indulge in a criminal act," citing 1 Wigmore, Evidence, Sec. 117,118 (3d ed. 1940).

of mind which negatives accident, inadvertance or casualty," citing 2 Wigmore, Evidence, Sec. 300,302,307,363 (3d ed. 1940). "Intent spells purpose to use a particular means to obtain a desired end, whereas motive supplies the reason that nudges the will and prods the mind to indulg the criminal." 41 Iowa L. Rev. 370 000 reason to indulge 0

To Ь, 0 В similar offense, according to the authors,

intent." "Evidence sufficiently ..."It o fi another must 0 8 bе crime 40 shown allow must that for cast some the some prior probative light acts npon are value;" similar defendant's at

"Knowledge signifies awareness," 41 Iowa L. Rev 329.

"Plan or Design refers to an antacedent mental condition which evidentially points to the doing of the act planned," citing 2 Wigmore, Evidence, Sec. 300,304 (3d ed. 1940).

Iowa o f ρ 0 similar ut H distinctive such d loing many L. t o evidence Rev. plans things jΙπ the p.330. plan of behavior the facts surrounding are may z, facts woven to strongly identify surrounding Op the evidence 70 basis the crime operation. crime accused plan of dissimilar **B** the A in are Ъу A certain inherent means of peculiar strikingly events," instances value proving method 41

important when pondering the admission of other crimes to prove Identity. Here one seeks out comm features in another crime to point up the liklihoo that the accused was the perpetrator of the crime in question," citing - 2 Wigmore Evidence 306,410-"Identity question," clr. "The quality of the acter po sameness figur out common es

"Inseparable C circumstances be fully shown I. Rev. p shown without Rev. p.330. Crimes s with o crime charged proving the other," 41 point o f time and

TENTH CIRCUIT CASES

two which continuing action cocaine year case the motive because in prior o f old drug conviction prosecution Recently, course of U.S. 0 % i t identity. ٥. transaction, was New Delhi, March Nolan, conduct, asked similar 22, 551 The t o in 1977, guilty in marijuana in India; F.2d introduce court ω these foreign the 266. allowed the knowledge, (3)regards: tenth circuit t o jurisdiction (England) That Same case show case capacity, at issue; kind other trans intent, (1)involved decided narcoticsdesign, habit ρ

principles and deciding rules for admitting similar the case, the court noted offenses long standing

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charged crimes, wrongs or alleged prejudicial acts may be received for purposes proving motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. United States v. Freeman, 514 F.2d 1184 (10th Cir. 1975): Freeman, 514 F.2d 1184 (10th Cir. 1975): United States v. Parker, 469 F.2d 884 (10th Cir. 1972); United States v. Pauldino, 443 F.2d 1108 (10th Cir. 1971), Cert. denied, 404 U.S. 882, 92 S.Ct. 212, 30 D.ed.2d 163 (1971) United States v. Eagleston, 417 F.2d 11 (10th Cir. 1969). The evidence in question in each of the above cited cases was not that of a criminal conviction, but it was that of a criminal activity. It follows, then, that the evidence introduced under this exception need not be a constitutionally valid criminal conviction. Even if Nolan's British conviction should not meet our federal constitutional demands, it is still admissible under this experience that the still admissible under the sexperience of the still admissible under the sexperience of the still admissible under the sexperience of the still admissible under the sexperience of the mands, in ception. Rule 404 should not meet our federal comands, it is still admissible ception. Furthermore, Fed. RuRule 404(b), 28 U.S.C.A. support does clusion by s not require proof of a (that required under Rule (es of Evidence." "Other on by reference to admission repeatedly held that or Evid.

Evid.

s this con
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r acts."

conv conviction 609 of the evidence of F evidenc 0 H such Federal rule nn-

for the purpose of proving a common popportunity, intent, knowledge, identof mistake if relevant and mand issues raised. and The for That issue is not before us.
We hold that is a the purpose of proving a common plan, mointunity, intent, knowledge, identity or anistake if relevant and material to the clissues raised in the federal prosecution proof of Nolan's British conviction was these purposes in the instant case." enhance punishment. conviction admissible motive charges used absence

"The general rule is that evidence of illegal activities other than those charged is ordinarily inadmissible. There are, however, several well-recognized exceptions to the rule, including receipt of such evidence in order to prove motive, opportunity, identity, absence of mistake or accide United States v. Freeman supra; United States v. Burkhart 458 F.2d 201 (10th Cir. 1972); United States v. Pauldino, supra." illegal s ordinarily motive accident ۷.

Rather, it would arrow the cillegal acts unless the cadmission is to prove the of the defendant. We how the defendant of the defendant of the defendant of the evidence of "We rever, the e admissible. note that Rule 404(b) is not exclusionary the sense of the above rule of our Court. her, it would allow the admission of uncharged s unless the only purpose is to prove the criminal disindant. We hold that under le evidence of Nolan's prior le." under (exclusionate our Court se for their disposition disposition ru conviction

"The probative value of proof of the commission of the prior crime must outweigh the prejudice. Rule 403, supra. This determination is properly within the trial judge's discretion.

United States v. Baca, 444 F.2d 1383 (10th Cir. 1976), U.S. Appeal Pending; United States v. Baca, 444 F.2d (10th Cir. 1971), cert. denied, 404 U.S. 979, 92 S.Ct. 347, 30 L.ed2d 294 (1971). A critical issue in the case at hand was Nolan's intent and knowledge. Proof of the British conviction was very relevant in the proof of those elements of the crime. In view of its obvious probative value, we hold that the trial court did not abuse its discretion in admitting this evidence."

(2) the evidence intent. 'must tend to identity, or (2) the evide the crime Burkhart, "In United States v. Parker, supra, we announced some guidelines to test whether evidence of uncharge illegal acts should be admitted: (1) the evidence must tend to establish intent, knowledge, motive, the intent, knowledge, motive, of mistake or accident; (3) real probative value, not j uncharged charged. absence of mistake or ence must be so relate contraband that it se e value, not just illegal act must rged. See also: , identity, or absen 3) the evidence must just possible worth must be close in ti lso: United States related knowledge, motive e or accident; serves to t o the absence worth; must establish time imhave and

COLORADO CASES

III

and cases have long been in the wielded distinct intent. not admitted assault 556, often by the defendant, an The court specifically said the similar transaction, the Supreme Court The charged, assault, cited case of Warford V. rules espoused as part the involving the occurring similar enough to be admissible rules applicable in Colorado. 0 £ was admissible to show stated the in the preceding three-quarters of Res Gestae the same parties, People, same rule but as a 43 tenth circuit and exceptions an hour after Colo. and a motive transaction separate 107, pistol Ιn

allowed 412 assault), the theory so related and p.2d P. 2.d the Henson 974 227 Bell v. In numerous cases since then, the court would (murder), other transaction, whether similar (murder), Abshire v. (kidnap-rapes). that ۷. People, 406 P.2d People, 442 p.2d 406, interwoven the separate People v. ಬ Plotner, 534 P.2d 791 (2nd crime to be inextricable from the People, 681 (murder), was (checks), 87 part Colo. 507, 20 o £ People v. dissimilar, Segura the Res Gestae, 289 ۷.

admission similar or dissimilar terwoven evidence leading found in (1945).both other fetus'. hysteria deliberation preconceived case the The court said When the In that case a mother of similar transactions of tragedy and inexperience, Occasionally, the Colorado Supreme Court has in deaths in same trunk. plan in the issue and (2) "admissible otherwise in proof this area is William v. rule death were 0 H crime charged, rather crimes disposing and the other major similar offenses: the was Reference was discovered, reference was alright because but was o £ remote on the Res Gestae charged with killing her defendant's and made ĺņ two other fetus People, also than (1) interwoven with time. rule t o offspring o fi the in proof of the 158 p.2d 447 Probably admissibility other injustified а

240 Further, petrator defendant in whose possession they Stull, p.697 possession of needed μ, Ή of the rather (1925).344 P.2d when strengthens crime." the similar than as the The court 555. three bodies strengthens the the part See also presumption and proof of life, offenses were admitted for specific o f indicated the Res Gestae. May v. were found as the perthat People ф limiting instruction 29 See also identification Colo. and

subsequent transactions burglaries months before and one month after). repeatedly transactions before establishes that defendant and that such evidence is not inadmissible like crimes," similar o f design or o fi defendant ខ្លួ whether subsequent related offenses, or a 381,243 P.2d 762 (1952), on embezzlement, admitted similar prior crimes," p.441. erry and to the crime been held by our offenses, in order when thefts. . ⋖ scheme, p.441. on trial they "tend People, and after the offense charged charged are admissible Another interesting case, Ray v. and establish defendant's The for 181 P.2d r. crimes court t o court held that a specific offense has participated to establish guilty of prove plan, system, habit or design The that could be 439 The court case involved a series of r. to (1947),another offense." is competent to show commit a either admitted merely "Similar to said, decided show (couple motive, intent, because identification, as similar "It has offenses People, o f

logical ruled 380 connection between the to prove identity of the offender, (1974), as necessary court has long Webb been especially liberal allowing similar a S ٧. the People establish People, two independent 97 Colo. People v. 262, offenses" the 49 P.2d 381 which

allowed claimed he was an innocent bystander. the defendant. to place in the defendant was accused of selling evidence, The court ruled: a previous transaction between police The illegal drugs and prosecution was

has been stated that this exception

applies engage in a certain criminal activity, and it See also dispute," cases where motive, identity of the actor, and intent Colo. 1, 481 P.2d 417. ۷. Williams v. People, Orr, 566 P.2d 1361 (Colo. 1977), Leyba Dago, the (citing 497 P.2d 1261 evidence shows a larger continuing plan McCormick on Evidence, (I.D. (Colo. 1972), motive and design case) supra, Sec. (Identity especially 190 ۲. People, (2d case), applies

state's case without giving a limiting instruction transactions purpose Supreme Court found error, ruling that if remote the to be o f t o o f instructions should be couched in words such as limited allowed presented: (1) jury should again limit use of the evidence, Another very important similar ı, other acts" or "other Stull purpose of the admitted evidence, several similar acts to be admitted acts, ۷. the prosecutor must advise court (2) People, if court admits, case 344 P.2d conduct." in the area 455 (1959).it must instruct o f (3) similar similar transaction in the general "other o f

character of such collateral acts question, (similar this comply ۷. burglary, People, 377 P.2d 125 (1962). o f offenses) and there must with the "degree of similarity" their be admissible conspiracy and bribery case, that admissibility. occurred at or Ъе 28 a substantial degree а similar transaction, the state are about the The evidence must important The court emphasized time and "time" in the detero f of similarity "time show the act in rules that and the

transactions,

page 70.) between 0 on the posture admissibility similarity is feren case 128. them. practice, being Later admitted. (cites o f of evidence to tried except largely on that the the Kos case." proximity The court left same al 4 for establish the t o page, In People, the the in point of time and the found it the the court notes that victim, discretion of the trial Clews 144 Colo. to be case, exception who was ρ 505, another similar facsimile entirely 357 ۲ • degree 2do f court

scheme, urglary was enlarged plan Martinez, In the 70 admitted as the design, more number 549 P.2d 758, recent is illustrative. οf a similar exceptions cases, മ transaction to show common the burglary case where to include modus Colorado The court Supreme Court stated operandi another

to show closely related to the defendant was being the the areas where the lin the methods used in admissible s V. People, Wilkinson since Colo. of one burglary wanother burglary. 1044. (1969).admis Show a common Simms, 185 Col People, 178 Co lkinson v. People 969). In People 18 Peopl other. its ۷. evidence ssible ev the on both occasions to relieve the sproperty." 178 Colo. at 265, Consequently, it is apparent evidence of each burglary would sible even in a common control of the control o a t he general r criminal People v. People v. People, supra, ed days prior to the ble since "(t)he ommon scheme, plan, or design. Pe 85 Colo. 214, 523 P.2d 463 (1974); 178 Colo. 248,496 P.2d 1040 (1972) . People, 170 Colo. 336,460 P.2d 7 People v. Moen, supra, evidence lary was presented in a trial for glary. We held the evidence admis similar There s used in ob 526 P.2d at , supra, evice, supra, evice, the theft ы Ihme, Moen, rul We are We held the evidence at transaction similar in the transaction upon w criminal acts burglaries were tried in point le, of urglaries were committed, an obtaining entrance." 186 d at 646. Furthermore, in evidence of a theft have exceptions, hov 187 Colo. 186 Colo. relieve the same lo. at 265,496 P.2 apparent that in not be cour charged was held nodus operandi was leve the same victi trial would have s may be admitted r design. People d 463 (1974); Howe d 1040 (1972); 36,460 P.2d 774 admitted 48, 528 P 196, 526 however, to lly held that for evidence P.2d which admissible for P.2d 6 P.2d in this natur been victim committed other show d 380 the e and

evidence of similar crimes is when the crimes resulted in c sufficient to introduce and it is a suffin when the cr sufficient it is clear Evidence Sec. 190 at clear introduce evidence transaction reasonable d 451 (2d ed. in convictions. It lence of criminal tion need not be admissible asserting doubt, 1. 1972.") that only McCormick, acts;

Other cases on common scheme, plan or P.2d 661 (1972), People v. Simms, 523 similar People v. Moen, 526 P.2d 654, 559 P.2d 1108 transactions are People v. (1976).Hosier, 525 P.2d 1161, design or modus operandi P.2d 463, and People v. People v. Lamirato, 504

similar offense was admissible to show defendant's plan, scheme, sister by the defendant, who was the babysitter. esign, intent, guilty knowledge, or similar The Hosier transaction admitted case concerned a was the beating of the victim's modus operandi. murder of a child where The court said

with the offense under trial and so similar in character that a where the other transactions are so connected in point of motive, scheme or design and added "especially this is true admitted. plan or scheme method of gaining entrance. Entry was to slip the locks on the doors. language referred to the area of the burglaries and Moen was a The court cited the exceptions of intent, plan, can be imputed as to all of them." The "so burglary case where gained by use of a plastic ф similar incident was

was charged. concealed imity to the said at page 1115: and returned for more goods. She was arrested. The court the items under her clothing, tο Henderson time and place of the acts with which The nature of the act, prosecution, was relevant to show scheme, plan " The transaction here was in close proxwas a shoplifting case where the viewed in the light most removed them from the the defendant defendant

People, 104 Colo. shoplift clothing from the store." 229, 90 P:2d 5 (1973).

See also Bacino

OTHER JURISDICTIONS

,,

IV

(Kansas show identity of 1922.) leading The the case facts murderer where and pertinent similar murders were introduced r S State v. part King, 206 P.883 of the case

by strangulation or similar violent mody was last seen alive by King, and Woody's disappearance in 1909 King had his possession and exercised rights of ownership over Woody's two horses, but gy, and harness, and even had such in personal effects of Woody's as his over (King was convicted of murder.) King The principal error or series of errors. was Woody, convicted livery t William (King was (King was (King was (King was (King was (King was all relate to the principal error or reversal relate to which he relies for reversal relate to which he relies for reversal relate to the admission in evidence of facts pertaining to admission in evidence of facts pertaining to admission in evidence which came to light about the related to livery About quarters He was la made fairs to wandered involved tenso livery mission in evidence mussion in evidence o other murders which came to the time Woody's skeleton was feet time Woody's skeleton was feet to the jury barn lot in 1919, and where the time was to the jury that the time was to the jury that the time was the rn at Maple Hill, in Wabaunsee county.
out the 1st of April Woody disappeared
d was never afterwards seen alive.
August, 1919, the skeleton of Woody
s found buried face downward in the King's ery barn lot under the manure thereabout. The hyoid bone of oat of the skeleton had been f icating that Wood's death had show which lst of April, who worked for who worked for King in the year. King then operated at Maple Hill, in Wabauns ating of and which crime barn m T. I this evidence, the competency his strenuously challenged, tend while this same barn was in King's possession, on T. Ringer, a Nebraska peddler, wad about the country attending puband selling cheap jewelry which he copper wire and small shells, can be to be the country attending by the copper wire and small shells, can be the copper wire and small shells, can be the copper wire and small shells. last that copper wire and s livery barn ٠ ا for about selling cu o f The seen some the murder of defendant alive 1909. time. occurred on and made bу murder.) King series of error in the Woody manure pile bone of the Ringer Rufus King. jury. one King, and 9 King had rights of which in a livery was OT spring of competency nged, tended ı, t King, w John A. fractured, disappeared After his occurred about The -Bnq а overcoa intimat means. уо public appeal was one headfacts came after

disappearance King had in his possession and exercised rights of ownership over all of Ringer's personal property-his deeds to properties in Nebraska, his spectacles, jewelry, and copper wire and shells for making jewelry, his collars, blankets, dog, horses, and wagon. In August, 1919, Ringer's skeleton was found buried face downward in the lot of the livery barn near Woody's body and the skull of Ringer's skeleton showed that it had been crushed by an axe or similar instrument.

ship house named from 1 never which sorghum. property tended King, p over it-Gut: sehold goods, facts iacts tenuing ...

I were developed over defendant some proceed to show that in 1913 a young farmed to show that in 1913 a young farmed Reuben Gutschall residing a few mild Reuben Gutschall residing a few mild Raple Hill suddenly disappeared and Maple Hill suddenly disappeared and and King exercised rights of ow it-Gutschall's chickens, hogs, goods, horses, wagon, harness tending to re developed show that i immediately show came into the wagon, the third defendant possession 's objection ew miles farmer homicide ownerand was

But to that rule there are many well-recognized exceptions which are as potent as the rule itself.

Any pertinent fact which throws light upon the subject under judicial consideration, the accused's guilt or innocence of the crime for which he is charged and on trial, is admissible; nor is such probative fact to be excluded merely because it may also prove or tend to prove that the accused has committed another crime or many crimes concerning of Ringer tried for defendant What been the theme text-writers. evidence touching other crimes perendant on trial for any specified on the theme of much discussion by the tribers. The ordinary rule, of the evidence of extraneous crimes in -writers. The evidence of e about out the admissiblity of the evidence ling these crimes involved in the deaths er and Gutschall when King was being or the murder of Woody? The admissibility o f Ъу perpetrated ed offense course, courts and has is ЬУ ρ

Ringer, and G aspects tende one of these The extended The circumstances cumstances surrounding the deaths of Woody, and Gutshcall, so similar in their dominant tended strongly to show that the murderer otherse victims was the murderer of all three. inquiry made into the details o f

three crimes was bound to aid materially in disclosing the identity of their common perpetrator. The evidence touching the similiar disappearances of Ringer and Gutschall, King's possession of their property upon their respective disappearances, his

statements touching their distatements explaining how he effects, and the facts of the discovery of their remains of the effects of their remains of the effects. and to prove himself of ot lives and con οf and object the admissible murderer of Wood" prove h. ove his motive and system f other men's property, by concealing their bodies of the exhumation ins on premises the control, were con r disappearances, hicker came to possess to the control of the con Ringer, common and Gutschall n of possessin t o ere competent identity of possessing taking their accomplish that his thei that

the minumum defendant The who spinal defendant anyway. gunshot ber-Rapist instruction O ۷. o f similarly Jacob ა გ Peete, Another cord resistance, wound the S allowed ee Denton uses at that 169 murderer also missed case, attempted the same P.2d was the the Commonwealth and tended neck, where Mrs. method was 924 murdered, Denton production to produced (Cal. Logan's likewise identity sever and transaction t o ۷. ω 1946) admitted Mrs. 0 f identify instant bullet Ransom, spinal and proper, ρ where the Logan's S modus imilar t o from cord tended 82 defendant death since show operandi A but homicide behind spinal with to court 2dthe design.) killed 547 identify s S cord ω severing method said, 0 was the (19 51)

crime," was P crimes H 10 evidence People Several C gically ∞ O modus the Cal.App. ۲**۰** said: 0 operandi ď ۷. 1's perpetrator citing whether o f decisions operandi На lat ordinarily inferred ston, "When, another final arty, 2doffense common People 0 н 4 444 ı, case S 164 not have that o f offense P admissible and whether ۷. in t o P. which Cal. P the defendant held 2d1e İf both the the Peete, 91 ۷. crime defendant App. offered instant must receive one that there the Houston, (Cal.1968). if 169 2dcharged, rather charged the other 7. ĺs ۲ • to 322. case, 1's some test 2ddiscloses 219 prove crimes than guilty 924, s o evidence further The Cal o f B There clear that common design, primary some court People admissibility and the 0 App. ρ Ŧ the it connection comment other one distinctive o f goes may ۷. issue 2dcourt other he charged per bе 187 Adamson on ĺs o f at and o f plan to 7 5 say:

(Cal. guilty 1967). o f the other," citing People v. Cramer, 429 P.2d 582 * . . .

Respectfully Submitted, Frank G.E. Tucker, District Attorney

Mixton K. Blakey, Deputy District Attorney 2691

George Vahsholtz, Deputy District Attorney 7179 4th Judicial District

CERTIFICATE OF MAILING

I hereby certify that I have mailed a true and correct copy of the foregoing to Kenneth Dresner, advisory Attorney for Theodore Bundy, pro se, Jordon Bldg. Suite C.,307 N. Main Gunnison, Colorado 81230 and Kevin O'Reilley, advisory Attorney for Theodore Bundy, and Theodore Bundy, % of Garfield County Jail on the 28th day of October 1977.

IN THE DISTRICT COURT WITHIN AND FOR THE COUNTY OF PITKIN AND STATE OF COLORADO

and the

Criminal Action No. C-1616

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

VS.

THEODORE R. BUNDY,

Defendant.

MEMORANDUM BRIEF IN SUPPORT OF PEOPLES POSITION IN OPPOSITION TO DEFENDANTS MOTION FOR BILL OF PARTICULARS

40 to concerning greatly rs. t_o that position characteristically, through Particulars do law, procure disclosures designed. not principles 0£ case. the Defendants most indirectly what bill and theories the the unnecessary limitation hinder that the Bill ΟÉ the These should proper the order O fi As behind Defendants' the particulars purposes, Particulars the cases Defendant, to own purposes first efficient ıs. 0 H the the properly consider the People's 0f the investigation the be examined. Defendant will not do directly, the prosecutions bill and the point masked Motion hidden case. for which the and, are subterfuges through his Motion, prosecution or out for πį effect in 0f Ηt οf this fact, the Bill evidence ր: Τt law the O H tacit further ე. is not bill 0f evidence, pertaining such evidence this Ω for the Particulars Bill ΟĦ which, design use discovery is attempting case the appropriate submitted People's particulars О Њ conclusions position

ıs. information Ľ, statements criminal strikingly amorphous and general О Н necessary whether At like, respecting cases first to 9 "the the s L not glance, 40 proper office preparation മ the furnish bill charge the 0f law to particulars of his stated the surrounding of in its Defendant മ Bill defense, Ϊ'n wording. the should of Particulars the indictment further determinaissue, Thus,

States Gypsum Co. 37 F. one can glean the more specific rules and principles which should be applied. avoid seen throughout In the interstices of prejudicial surprise at the law pertaining to a supp 398 the the generalities, however, (DC Dist. Col; 1941), trial" Bill US v. United

discretion. Balltrip v. People 157 Colo. 108, 401 P2d. be disturbed on writ of error in absence of an abuse of discretion of the trial Court, and its action will not motion for such a bill generally rests in the sound ţo There is no doubt, absent an express statutory the contrary, that the grant OK refusal

purpose to disclose in detail the evidence upon which more specifically the offense charged. accused by the indictment or information, or which he necessity of nature of the particulars demanded; in determining whether a Bill of Particulars should be evidence which the government may hold against him. does not entitle a defendant to explore at will all the held that a provision authorizing a Bill of Particulars is necessary in order his defense, acquires granted include, among others, such matters as to Bill of Particulars" 5 ALR 2d 444). 2d 1160, 885 Ct. 1064. prosecution expects to rely (emphasis added)" (10th Cir. 1954). (CA9 from other sources, in order that the The (Supra); Fischer v. Cal) and (3) the possibility that further same purpose of a Bill of Particulars 380 F2d 686, offense. information that is furnished the to protect him from a second prosecu-In general, the factors involved Annotation; cert United States, den 390 US 962, (2) Thus it has been "It is not its "Right of accused the possible such a bill he may prepare 212 (1) the is to define

That SD object is to limit which the bill was drafted, or, Particulars where to do so would unduly limit the prosecutions evidence. the actual specific requests made therein. motion, and the motion should be denied where the indictment may be incidental boon to a defendant in a situation where such strategy as the underlying objectives of US v. charges pending against him." properly (DC motion for Bill of Particulars is allowed, v. Schembari clear Mo) 디 purpose Greater Kansas City Retail Coal Merchants Assoc. Supp 440. ж 5 that acquaints the defendant with the nature of the consideration in allowing or disallowing the may is generally ascertainable by the way in 1s Billvoluntary disclosure of Supp 503. (CA4 VA) 484 F2d 931. have clear, from the cases, that follows: "While pinning down the government of Particular Motions are the prosecutions evidence. several This objects the motion are satisfied გ ს. US v. Pellegrini (DC Mass) in most of particularly true where as the One Court characterized its purpose case the cases, One such tactical 1,4 seldom granted The rule file. is not

surrounding potential witnesses. requests burden. FRD 421; Kan Bill In fact, the general rule is that an accused cannot 287, ք US v. within his own knowledge, or readily accessible for disclosure of information relating to facts Bill of Particulars if the specifications asked of Particulars Motion by the way of establishing Some Courts have characterized their ruling This has particularly been true 507 P2d State Hedges <. 342; (CA 10) Costello, King v. US 458 F2d 188; IJ U. v. Conn Cir (CA 10) 402 F2d Robinson 51, in cases of State v. 241 A2d (DC

him to confer with them had request been made." One Court responded: rights under Colorado Rule of Criminal Procedure 16. 150; Gates v. Us 122 F2d 571 (CA 10; 1941), cert den 314 accessible asked for are evident from an examination of the pleadings US 936. in denying defendants motion for Bill or Particulars where McCabe, 1 NC App 461, 162 SE2d 66. state at all times has been ready, willing, and able rule SD cert v. Ansani (CA f Commonwealth v. Barron (Mass) 252 NE2d 220. This is particularly true if the specifications rs. him with a list of state's den 268 US 694; to him. or may be procurred through other means readily entirely consistent with the defendants Talmadge v. US (CCA 7th Ill) 4 F2d "It is not an abuse of discretion 111) Hood v. US (CCA 10th) 78 F2d 240 F2d 216, cert witnesses den 353 and permit State

appear to operate in many cases. calls merely for conclusions of law or the legal theory accepted rule: while particular facts, which become limiting through the the prosecutors case. F2d cert den 306 US 635; effect is to make the theory of the case, not lawyers. it is encumbant upon the accused to anticipate the to trial, which theory or strategy he will proceed. granting of a motion for Bill of Particulars which apparent when one looks at the affect the disclosure ㅂ 216, cert den 353 US 936; Supp 303. Consistent with the above is another universally <u></u> **B i 11** An accused is not entitled as of of Particulars, has on the Peoples case. require This rule may not, the District Attorney to US v. Dilliard (CCA 2d NY) US v. Its applicability, however US V. Ansani (CA 7th Ill) at first Schillaci Thus glance, right choose,

proceed on without adequate knowledge of the facts. be required to elect, prior to trial, which theory to theory of proof or the evidence which he intends to introduce. prosecutors entitled to a Bill of Particulars of the prosecutors Fruehauf granting the Defendant's Motion, the People would case and be prepared, (DC NY) 196 F gdhs 198. the defense It is submitted

prosecuting attorney. inextricably tied this is dependant upon an analysis of the the Court would, ispo facto, their theories by which the People may proceed. trial and, therefore, choices, prior to trial, by a Bill of Particulars, the complexion of the facts develop. The theory of the Peoples case is, by necessity, often develop differently at trial then prior 40 the By requiring the People മ facts given theory or argument will be limiting the relevant O.f. that given case. facts to limit All of

cert den 405 US 936; prosecutor's evidence, will not be granted. furnishing of which would amount to a disclosure of the standing rule exists that a Bill of Particulars, the Cefalu v. this character which would unduly limit the evidence 2d 1003; the ß governments evidence. Ct 1191, Mo) crime charged, not to furnish him in advance with government should not SU 449 F2d, The courts have long recognized the the Fischer Particulars is to better apprise the defendant (Ca 10, Colo.) 234 F2d 522. The key distinction US v. Addonizio (Ca 3 NJ) 451 F 2d 49, (1935, Bill of Particulars. cert ٥. CCA Mass) State v. Ciaveu, US (CA 10 Colo.) 212 F 2d 441; den 405 US And, therefore, be granted. 79 F 974, 2d 566, As a result, 215 Kan 546, 527 31, The Mulloney v a motion Н cert US V Long Ed 2d 247, real purpose a long

in the effect of the Bill of Particulars to limit proof. between a Bill of Particulars and discovery rights lies purpose motions limit that and his role of participation therein should be denied full discovery, evidence, designed as a reality, defendants request, by motion the day, Kessler the proof at trial of disclosing evidence." the FRD 52. of this defendants motion for Bill of the effect of which, unlike discovery, would time, (CA 9 Ariz) 476 F disclosures would be an attempt subterfuge (DC NY; 1942) sort as it has here, it has been held that and place of the commission of the offenses Where the Court has granted the defendant are "usually not granted for for disclosure for 43 F 2d 1211. discovery and helpful to Supp 408. US v. Goldstein O H Bill of the prosecutors Particulars It is submitted 0 f represents, Indeed, merely the defense, Particulars, the

court did not abuse cert den 394 US 975, 22 LEd 2d 754, 89 committed. affect motion for a precisely the nature of the Defendants motion before Particulars analyze Court now. the been held in a it has on the are state contended showed premeditation and malice, The cases show consistent denials its Wilson v. to present. bill of Particulars that requested those when the facts The Defendant is asking the prosecution specific acts which specific its discretion limitation of evidence, and then prosecution for murder, that the State The error 4 Md App 192, 242 A2d 194 evidence state which aggravating in this request in refusing to information is requested. ŝ the Ct. 1467. defendant allegedly for facts which Bills is the This

should not be so limited if relevant and admissible.

even more precluded examples; Attorney could either argue this circumstantially or learn evidence. evidence which is recently discovered during the course a Bill (1973), 16-11-103 (b)(d) lists the aggravating factor as a hostage by him or by "He intentionally killed a person kidnapped or being at trial are not hard to imagine. The where (especially a relevant and take on added strength. from arguing those factors and its corresponding of Particulars is granted the People would be Because of the peculiar nature of the bifurcated potential scenarios as to how the District the witness who recounts his previous statements death ր։ a possibility, lengthy one) anyone associated with are the above often The most obvious common rules For example,

by Discovery. for Discovery." It is the Peoples position that each and (b) and allows him to prepare his defense based upon all of Colorado Rule Criminal Procedure 16 ongoing and attachs information which the prosecution has knowledge of. potential aggravating factor particularly true given the fact that discovery and; one; misphrased. Finally, it is submitted two, That motion is more appropriate it does not limit the Peoples evidence it protects the Defendant from surprise The motion should be the moment new evidence arises. that can readily be determined (I) (a) the entitled "Motion Defendants (4) and (III) for

nor not the for Kenny (CA NJ) 462 F2d 1205, cert den 409 US 914, 34 L the prosecutor's evidence, require the People to elect appropriate use of the Bill of Particulars. incidently, merely limit the Defendant's preparation affect and intent of the Defendants' bill is to limit trial on the matter. 176, their trial strategy and theories of 93 In summation, it s Ct 233, 234. This is clearly not the design is the Peoples position that the case and, US v.

Respectfully submitted,

FRANK G.E. TUCKER District Attorney

Supals

Milton K. Blakey, 269/ Deputy District Attorney

Lance Sears
Deputy District Attorney
Fourth Judicial District

additional research and rewriting of the memorandum opposing Defendant's brief and has likewise, been unable the Defendant's Motion for Bill of Particulars. District unable Attorney's Office of the Fourth Judical District, counsel 2. Due to to recent developments do the research necessary to and work load 40 response to the complete the in the

to the Defendant. this issue of the law requests such additional time and such extention as requested here will . • Counsel for the People believes that adequate not be prejudicial presentation

Ht Motion to Strike Death Penalty. and until July 29, 1977 to file brief in Opposition to Defendant's to Strike Death Penalty and Motion for Bill of Particulars. file the brief in opposition requested that Wherefore, the People move this Court for file briefs in Opposition to Defendant's the time be extented until July 15, 1977, to Motion for Bill of Particulars Motion an extention

Motion ex parte and would be reasonable The People further moves the Court to grant required by this delay. defendant such extentions as to grant this

Respectfully submitted,

FRANK G.E. District A

District

,; :

IN THE DISTRICT COURT WITHIN AND FOR

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THE COUNTY OF PITKIN AND STATE OF COLORADO

Criminal Action No. C-1616

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

vs.

THEODORE

R.

BUDNY,

Defendant.

PEOPLE'S MEMORANDUM OF CONCERNING SEARCH AND SEIZURE LAW

Frank G. E. Tucker, District Attorney 506 E. Main Aspen, Colorado

Milton K. Blakey, Deputy
District Attorney
20 E. Vermijo Ave. Suite 310
Colorado Springs, Co 80903

EOPLE'S MEMORANDUM OF LAW CONCERNING SEARCH AND SEIZURE

ISSUE I

DEFENDANT'S KNOWING AND INTELLIGENT CONSENT TO SEARCH THE SEIZURE OF ITEMS SEARCH OF DEFENDANT'S THEREFROM WAS LAWFUL PURSUANT VEHICLE ON AUGUST TO

defendant, Sergeant Hayward observed defendant August 16, 1975. defendant's vehicle. for attempting to evade an officer. testimony from Sergeant Hayward, of the concerning was and a satchel sitting next to the driver's seat in a residential area near his At lying the hearing on the Motion to Suppress the court He testified that he had stopped the in the the stopping back seat and that there was of defendant's the right (Sergeant Hayward's) After stopping the vehicle Utah Highway front seat

cooperative throughout the entire contact after he was stopped permission to ahead." Sergeant Hayward indicated that Sergeant Hayward described the defendant as being search his car and the defendant he asked the defendant

vehicle after consent to search his vehicle, and to recover various items of evidence Salt Lake County Sheriff's Office, came to the scene of the vehicle and from the trunk area. being told the request ЪУ Sergeant of Sergeant Hayward, Detective Daryl Hayward that he proceeded to search the the defendant had from

cooperative attitude contact with defendant during the search of the vehicle The testimony of Detective Ondrak further of the defendant and the amicable establishes nature

overall evaluation consent circumstances" The only reasonable voluntarily, knowingly of the evidence is in this case show that conclusion to be drawn from and that the "totality of intelligently. the defendant

BURDEN OF PROOF

the 4 burden consent (1974).04 U.S. burden of o f ı, has The 477 (1972), set proof In been given court α proving forth in Motion in suppression hearings referred as Ъу to Suppress Evidence the to United ω effect "preponderance primary to States its decision മ warrantless search. authority | < Matlock, of the the prosecution in on Lego the evidence" 415 ۲. issue U.S. Twomey, That 164 tha has

claim eponderance admissibility must court that that rejected when evidence Lego Fourth Amendment standard." ۷. this Twomey, be established beyond a position and is The court attacked on the court considered rights held went were constitutional on that endangered by to reasonable there state: the SBW petitioner' grounds no the doubt

"Without good cause, we are unwilling to expand currently applicable exclusionary rules by erecting additional barriers to placing truthful and probative evidence before state juries and by revising standards applicable in collateral proceedings". 404 U.S. at 488-489.

interest 0 the SB In "preponderance standard" well that 28 case the the constitutional rights court indicated clearly best protected the public o f an that accused the

"...It is very doubtful that escalating the prosecution's burden of proof in Fourth and Fifth Amendments suppression hearings would be sufficiently productive... to outweigh the public interest in placing probative evidence before juries for the purpose of arriving at truthful decisions about guilt or innocence." 404 U.S. at 489.

the eyidence. People to establish "consent" clear then that the burden of bу ص = preponderanc proof is upon 0 f the

REQUIREMENTS OF A VALID CONSENT

U.S. for stated search tion 218, lity valid consent to search in the must whether o f Or 93 The principle that бе coercion, was one to be S.Ct. 2041, (1973). a11 United "voluntary." the а search circumstances." States was t o Supreme Court be constitutionally valid The court "voluntary" In Schneckloth v. that determined from the went case, the Supreme set 01 no the down to Bustamonte, product hold that the requirements ρ consent Court 412

position 58 "wavier" S. .Ct. 1019, as stating: H put was urged upon the court (1938).forth in The Johnson court ٥. specifically Zerbst, that ω 304 concept rejected U.S. 0 £ 458 the

make less the knowing statement in the previous the basis for extension situation". Schneckloth Schneckloth We decline to follow what on has termed "the domino methodadjudication...wherein every o f We Johnson v. ss compels, application of broad rhetoric to to decline the such generalize and to ignore constitutional guarantee e differing constitutional guarantee cline to follow what one judicial scalline to follow whether the follow whether the following to follow whether the following to follow whether the following to follow whether the following to follow whether the following to follow whether the following to follow whether the following to follow whether the following to follow whether the following to follow whether the following t waiver an ∢. er with a equation Zerbst, t the previous j.s the the waiver requirements

st, that justifies, much

easy equation of a

n a consent search. To

ion is to generalize fro make | < t o o pinion is ma to a wholly dif Bustamonte, such an equation constitutional purpose substanc s made different te, 412 much from scholar

at P in the 0 circumstances" voluntarily, \vdash tached) Hayhurst, requirement 435 particular valid | < The (1974).Wieckert, consent Colorado knowingly S.Ct.27748, test. that case Capps search courts 554 1. S ф Phillips and consent t o ١. P.2d 688 decided and b'e intelligently have People determined by "the totality have ٧. to looked November (1976); People ω 426 P.2d People, likewise adopted warrantless search at and that the 462 21, (1967)P.2d requirement 1977. ۱۵ and determination 594 Hancock, (opinion People бе (1969)o f given

"totality issue o f o f The "voluntariness. circumstances" courts have reviewed that maybe many viewed factors in determining within the

of "coercoin or duress," Capps v. People, supra. surrounding factors that will indicate the presence or absence Hayhurst custody or non-custody of the defendant and other pertinent 544 P.2d 646, (1975); Phillips v. People, supra; v. People, The courts will look at the time of the search, the supra. People

such will greater restrictions than those mandated by the Federal Constitution, our state constitution and statutes may impose on police activity voluntary, knowing, and intelligent." advisement was given in a particular case to withhold consent to search. That case, citing evidence is quite often adequate to prove that a consent was others, makes burden, to be considered in determining voluntariness, case regarding the issue of advisment of not be done by the Supreme Court of Colorado in The The court notes, "...while proof that and such a warning--if given--would be a persuasive court's attention is particularly drawn clear that in spite of the possibility certainly would lighten an express Schneckloth the right other

following that set forth by the U.S. Supreme Court, that expressed advisement is not required. ı, quite clear then under the law of Colorado,

defendant's Volkswagon on August 16, 1975, was clearly and that the fruits testimony circumstances" o f In conclusion, it is clear from the uncontradicted Robert Hayward of that search are therefore admissible. surrounding the consent to search the and Daryl Ondrak that the "totality

SEARCH OF DEFENDANT'S APARTMENT AUGUST 21, 1975

CONSENT AUGUST 21, 1975 TO WARRANTLESS TOTALITY OF SEARCH OF THE DEFENDANT'S THE CIRCUMSTANCES SHOWS A VOLUNTARY APARTMENT

defendant's apartment is voluntary vehicle. The evidence testimony conversation prior voluntary defendant consent to search in evidence before of cooperation and that clearly he understood what he doing at that time. Bundy's cell where he requested Mr. the defendant understood the nature of his Miranda gave Mr. Bundy his Here a review of the evidence likewise shows of Detective Ben Forbes, indicates consent knew The law applicable and not the product of coercion or duress stated The evidence shows that Mr. Bundy's attitude was is clear what he to warrantless Bundy concerning t o from the testimony and the signed the execution of the search waiver and was execute essentially The evidence indicates that had been placed Miranda doing consent to the consent to a consent and search. rights during to search defendant's the that this same The uncontradicted to search his after his this court that 200 search waiver that that he went Detective same warning.

evidence indicates requested that consent that understand what that totality of the circumstances, that there was established by voluntary bernardo and Warren, and was driven that for a t County jail to his arartment a few hours The evidence indicates that he was no time during the conduct of that based upon present during a warrantless the search be terminated. consent was going on around him and at no time that the defendant was cooperative, appeared a preponderance of the evidence, considering the applicable law revoked search of the defendant's the search. 70 altered. During The People that to his taken the the search, search apartment а later by from prosecution apartment voluntary De-

AUTC SEARCH OF OCTOBER 3, 1975

PROPERTY TAKEN FROM THAT VEHICLE ON OR AFTER OCTOBER 3, SEIZURE 1975, 0F ANY SEARCH OF THAT VEHICLE OR THE ADMISSION THE DEFENDANT HAS THE VOLKSWAGON PREVIOUSLY OWNED NO STANDING TO OBJECT BY HIM ON OCTOBER TO OF ANY 1975.

standing can be based upon defendant's relationship have an "interest" in the premises or place searched. Therefore, broadened our concept of standing to encompass all persons who search was largely determined on the basis Prior to the Jones application of the exclusionary rule by premises, or upon defendant's relationship to the property expectation protects interest o f of trespass and property interest. The Jones case constitutional 394 U.S. 165 89 S.Ct. 961(1969). 389 U.S. 347 88 S.Ct. 507(1967); Alderman v. ۱۵ The basis persons in any area in which there is a reasonable H. the search in the property searched, legimate presence upon the It is well established law that one who seeks is well accepted today that the Fourth Amendment United of freedom from of our U.S. constitutional law of "standing" States, 362 U.S. 257, 80 S.Ct. decision standing to contest an unlawful either rights must establish "standing" by having a state intrusion. present alleging a of the common law Katz possessory 725, <. 0 United United 1960. t o

the things seized or the place searched before 4 People v. an aggrieved person his motion should properly be denied. Parker, standing defendant does not Towers, 176 Colo. 29,49 P.2d 302(1971); People However, 541 P.2d 74 (1975). t o assert any constitutional violations. there clearly must be some "interest in" carry his burden of showing that the defendant Ιf

Colo. 306, 494 P.2d 97 (1972). an automobile has no standing to object to evidence seized a warrantless search of the car. Kurtz v. People, 177 It is equally clear that a person who has abandoned

People v. Trusty, 516 P.2d 423 (1973). standing does not result from mere possession of a vehicle, It is also been held in Colorado that automatic

authorized possession of the vehicle or in stolen vehicle has agreement with the majority of view that a person in undefendant has the burden of showing a colorable interest in standing to object to a search of that vehicle. Pierson, 546 P.2d 1259 App. vehicle which is searched. No-75-938, Non-published opinion April 7, Two Colorado cases further indicate that (1976),Two Colorado cases indicate People v. Velasquez, Colo. the

WARRANT SEARCH

WAS PURSUANT TO SEIZED OCTOBER THE A WARRANT. VOLKSWAGON ω 1975, PREVIOUSLY OWNED FROM THE OWNER BY THE BRIAN SEVERSON, DEFENDANT

properly suffer from defects conducted the People presumption o f evidence obtained and signed going pursuant to Ιt submit ı, any o f axiomatic forwarding and establishing by that validity. in illegality b its execution and therefore, the court has warrant that which has which once that the the before renders not search has defendant been i t ρ ρ warrant а shown warrant prepondance been has carries invalid

defendant finito, 211 t o existence N.E. 0 forward and 2^d o £ (1965)ρ warrant attack places the warrant. the burden Theodor on

is 2 d SB being 241(1976). representation by a defendant's owa Distric supported by material the burden 1 defendant attacks Court t o in preponderance of 90 and forward for misrepresentation of Johnson the issuance and the establish County, evidence. o f the 247 the warrant fact, materia State

The Oklahoma ı, However, impermissible Courts hold: there t o are 90 other behind the warrant jurisdictions that at a11

"We are of the opinion that the rule followed in Illinois is the better rule and therefore reaffirm our holding in Gaddis v. State, supra, wherein at page 45, citing a long line of Oklahoma cases we stated:
"Where an affidavit to procure a search

not be permitted to go E affidavit and show the chave knowleder jury do remedy in o affiant rather than to exc evidence." See, <u>Jakuboski</u>, В ave knowledge of to the affidavit." fo this we add that search does n or perjury in warrant is that in the claim of p this rule; the in the securing t o charges behind th punish texclude procure terms or claim of one the alleged the the did not search will o f

U.S. 973, 94 S.Ct. 3180(1974). by the U.S. Supreme Court. North Carolina v. Wren, 417 The split of authority has not been ultimately decided Arizona v. Raboy, 24 Ariz.App.586,540 P.2d 712(1975). This rule has been followed by many states.

STANDING-BURDEN OF PROOF

UPON THE DEFENDANT. OF PROOF AS TO STANDING IS CLEARLY

Justice Moylan, In <u>Duncan</u> v. State, 340 A.2d 722 (1975). establish detailed review standing is of the law concerning defendant's set out in 27 Maryland an opinion App.,

evidence indicates that Mr. Bundy delivered the title to possessory interest in that vehicle. uncontradicted Severson, the defendant Theodore R. Bundy, had no proprietary very clear from the record that after December about (\$800.00). The evidence at the suppress hearing time Mr. Severson took possession of the September 17, 1975, to Mr. Severson paid Mr. Bundy eight hundred Mr. Bundy gave Mr. Severson a bill of that the defendant had sold one Brian Severson. the vehicle SBW car.

any privacy, protected by the Fourth Amendment, reasonable submit that clearly his actions are inconsistent with the defendant seeks to assert here expectation of privacy. then an expectation the

Therefore, proprietary interest in the Volkswagon sold to Mr. was no conversation concerning Mr. Bundy's future use or poshand written bill of sale. establish ate of the transaction, September 17, 1975, the defendant is consistent with any agreement that Mr. Bundy at any after under over o f that only The People submit that the facts ı. f that September 17, 1975 would have any possessory the overwhelming weight of that Brian Severson, the notarized once the defendant had met the purchaser, vehicle ı, prior to the the defendant's contention, and The evidence shows that there there is nothing in transaction. the evidence. before the court title That the evidence ₽• . t Severson. and on Brian

CONCLUSION

search, standing, and search pursuant to a warrant, that the record and the applicable law pertaining to consent to court. the defendant's motion to suppress must be denied by the The People submit that based upon the facts and

Respectfully submitted,

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